

Exhibit C

STATE OF NEW JERSEY v NAEEM MILLER -- March 23, 2005

SHEET 1

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
ESSEX COUNTY
INDICTMENT NO. 03-05-1830
APP. DIV. NO.

STATE OF NEW JERSEY,)

Plaintiff,)

vs.)

NAEEM MILLER,)

Defendant.)

TRANSCRIPT
of
JURY TRIAL

Place: Essex Co. Courthouse
50 West Market St.
Newark, N.J. 07102

Date: March 23, 2005

BEFORE:

HONORABLE THOMAS R. VENA, J.S.C. and JURY

TRANSCRIPT ORDERED BY:

LOUIS G. GONNELLA, ESQ. (Office of the Public Defender,
Appellate Section, 9th Floor, 31 Clinton St., Box 46003,
Newark, N.J. 07101)

APPEARANCES:

GREGORY DeMATTIA, ESQ., Assistant Prosecutor
Attorney for the State

JONATHAN D. GORDON, ESQ.
Attorney for Defendant

Transcriber Catherine Weigel
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SHEET 2

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I N D E X

Witness	Direct	Cross	Redirect	Recross
FOR THE STATE				
Murad Muhammad	13,168	18,177	198,211	199,211
George Ramos	74			
Kevin Phillips	80			
Felicia Wright	96	123	162,166	165
Exhibits		Ident.	Evid.	
S-21 Six photographs		15		
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S-3 Wanted poster		174		
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MOTION TO SUPPRESS ARGUMENT				
BY: MR. DeMATTIA		39		
BY: MR. GORDON		41		
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BY: MR. DeMATTIA		60		
BY: MR. GORDON		68		

Colloquy

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1 (Jurors not present in the courtroom)

2 THE COURT: STATE OF NEW JERSEY VS. NAEEM

3 MILLER, Indictment 3-5-1830. We have present in court

4 Mr. Miller as well as Mr. DeMattia for the State and

5 Mr. Gordon for Mr. Miller. We have two issues to

6 resolve prior to having the jury sworn. First is we

7 need to discuss and take testimony, if necessary, with

8 regard to the fact that I've been made aware of,

9 brought to my attention by both parties -- apparently

10 it had been something that had been brought to my

11 attention in the past, but if not I don't recall and I

12 don't believe I did any investigation or research at

13 the time -- and we need to make sure that it's on the

14 record before we -- before we proceed any further.

15 The alleged victim in this case is an

16 individual by the name of Timothy Phillips. At a

17 certain point in time apparently Mr. Gordon represented

18 Mr. Phillips and apparently this took place at some

19 time prior to Mr. Phillips' death and, in fact, the

20 representation of Mr. Phillips by Mr. Gordon ended at

21 some period of time prior to Mr. Phillips' death.

22 First I think we need to find out specifically on the

23 record under oath what those facts are and, Mr. Gordon,

24 if you don't have any objection, could we put you under

25 oath?

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Colloquy

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1 MR. GORDON: No objection, Your Honor.

2 J O N A T H A N G O R D O N, SWORN

3 THE COURT: All right. Why don't you tell us
4 about the representation of Mr. Phillips?

5 MR. GORDON: Fine, Your Honor. Your Honor, I
6 don't recall when my representation of Mr. Phillips
7 commenced. I know that I represented him in two or
8 three drug cases that were all pending in Superior
9 Court here in Newark. I believe it was before Judge
10 Kemp. I engaged in a plea negotiation with the
11 prosecutor at that time Tina Amendola. Mr. Phillips
12 ultimately pled guilty to multiple CDS indictments. He
13 was sentenced to a State prison term. I want to say,
14 Judge, it was something like four years with 12 months
15 parole ineligibility, or something in that range. He
16 was sentenced, according to the Promis/Gavel record
17 that I have in front of me on April 24th of 1998.
18 That's consistent with my recollection, Judge.

19 THE COURT: So the time to appeal would
20 approximately be 45 days from April 24th, 1998?

21 MR. GORDON: That's correct, Your Honor. To
22 the best of my knowledge on that date Mr. Phillips went
23 into the custody of the Department of Corrections on
24 April 24th. I was not asked to file a notice of appeal
25 or follow up on an appeal for him. I did not, so from

Colloquy

5

1 my point of view and my understanding of Mr. Phillips'
2 point of view at that time was that my representation
3 for him concluded on April 24th of 1998. I didn't
4 represent him at any time after that, and it's my
5 understanding that he was killed in Newark on December
6 16th of 2001.

7 Now, I should also say, Your Honor, that at
8 the time that I was retained on behalf of my client
9 Naeem Miller, when I first met Mr. Miller he was
10 incarcerated here in Essex County Jail, having been
11 extradited from Scranton, Pennsylvania. When I met
12 with him it was -- I don't remember exactly when I met
13 with him, Your Honor. It was sometime I want to say
14 late last summer of 2004. At that time we discussed
15 the case in detail. I did tell him at that time that I
16 had represented the victim in the case, Mr. Phillips.
17 I discussed all that with him fully. I told him that I
18 would tell that to The Court and --

19 THE COURT: When was that?

20 MR. GORDON: I'm sorry?

21 THE COURT: When was that?

22 MR. GORDON: Judge, I'm giving an
23 approximation, but I believe it was sometime in late
24 summer of 2004 when I first met Naeem Miller. I
25 disclosed all that to him, I discussed it with him, the

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1 fact that at some point it might be put on the record
2 and he might be asked if he understood that and if, in
3 fact, he was willing to waive any potential conflict or
4 any issue with regard to an appeal, should he be
5 convicted, that it would be based upon the fact that I
6 represented Mr. Phillips in the past. He indicated to
7 me that he understood that, that he didn't see that it
8 was a problem based upon his knowledge of my reputation
9 and the facts that I was giving him, and he indicated
10 to me that he would have no problem stating on the
11 record that he was fully aware and advised of this fact
12 and he did not view it as a problem with me defending
13 him in this case and that he wanted me to continue to
14 defend him in the case at trial.

15 THE COURT: Thank you, Mr. Gordon. Mr.
16 DeMattia, do you have any questions for Mr. Gordon
17 under oath?

18 MR. DeMATTIA: No, sir. I believe it was an
19 appropriate representation that he just made with
20 regard to the facts.

21 THE COURT: Thank you. Would you --
22 Officer, would you swear Mr. Miller, please.

23 N A E E M M I L L E R, DEFENDANT, SWORN

24 COURT OFFICER: State your name.

25 THE DEFENDANT: Naeem Miller.

Colloquy

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1 THE COURT: Mr. Miller, you just heard
2 everything that Mr. Gordon said, right?

3 THE DEFENDANT: Yes.

4 THE COURT: Anything that he just said that
5 to your knowledge is not accurate?

6 THE DEFENDANT: He said it exactly.

7 THE COURT: Okay. You understand that Mr.
8 Gordon at one time represented Mr. Phillips, who is the
9 man that it is alleged in the indictment that you
10 murdered. That is what is alleged in the indictment.
11 You understand that Mr. Gordon, who now represents you
12 in this case involving the alleged murder of Mr.
13 Phillips actually represented Mr. Phillips at one point
14 in time. You understand that, right? Now, you
15 understand that it is at least arguable that somebody
16 could at some point or another say that for some reason
17 or another Mr. Gordon's -- Mr. Gordon has conflicting
18 interests, that is does he have -- does he have more
19 loyalty because he once represented the individual who
20 allegedly you murdered, does he hold more loyalty to
21 him or does he hold more loyalty to you. You
22 understand that somebody could arguably look at it that
23 way? Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Do you feel that way?

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1 THE DEFENDANT: No.

2 THE COURT: Is there any question in your
3 mind that -- that Mr. Gordon's representation of you
4 and his interest and loyalty is to you 100 percent?

5 THE DEFENDANT: Yes.

6 THE COURT: And that there is no doubt in
7 your mind and you are fully confident that -- that Mr.
8 Gordon has no conflicting interest and his interest is
9 only in providing zealous representation and defense to
10 you?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Gordon, any questions you
13 want to ask Mr. Miller in order to make sure the record
14 is clear?

15 MR. GORDON: I don't, Your Honor. I mean, if
16 Your Honor feels more questions are necessary go ahead.

17 THE COURT: If I did I'd ask them. I can't.

18 MR. GORDON: I think the record is complete,
19 Your Honor. I think Mr. Miller is making a -- based
20 upon my discussion with him -- making a knowing and
21 voluntary statement to Your Honor about what he knows
22 and what he believes.

23 THE COURT: Mr. DeMattia, for just this
24 limited purpose any questions for Mr. Miller?

25 MR. DeMATTIA: No questions for Mr. Miller.

Colloquy

9

1 THE COURT: Fine. Thank you, Mr. Miller.
2 You can sit down.

3 Mr. DeMattia?

4 MR. DeMATTIA: The only comment I have, Your
5 Honor, is I believe at this time The Court should feel
6 comfortable. My comfort level is here, also, with
7 regard to the fact that there is no actual conflict
8 because his representation of the victim ended years
9 before the victim was actually killed. I don't think
10 there's any actual conflict, or any perceived, or
11 appearance of any conflict or impropriety here.

12 THE COURT: Mr. Gordon, do you want to say
13 anything further?

14 MR. GORDON: I have nothing further, Your
15 Honor.

16 THE COURT: All right. I've had the
17 opportunity following receipt of that information to
18 review STATE VS. PIERREVIL - P-I-E-R-R-E-V-I-L, 341
19 N.J. Super. 266, a 2001 Appellate Division case rising
20 out of Essex County, and I've also read STATE EX REL
21 S.G., 175 N.J. 132, a 2003 Supreme Court case. In both
22 of these cases the facts are similar, and in both cases
23 it appears that the defense counsel at one point
24 represented -- well, in the Supreme Court case, in
25 S.G., the defense counsel represented the decedent, or

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Colloquy

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1 at least his law firm, prior to -- well, the key really
2 in the case is that there was a period of weeks
3 apparently when the defense counsel's firm represented
4 the -- hang on -- apparently represented the victim at
5 time simultaneous to representing the defendant. In
6 the particular proceeding -- that is the murder
7 indictment against the defendant for having allegedly
8 murdered the victim. Now, that doesn't sound like it's
9 particularly logical that you could represent the
10 defendant after he died while -- representing the
11 victim after he died while simultaneously representing
12 the defendant, but apparently in S.G. that was, in
13 fact, the case for a period of at least three weeks
14 after his death, and during that three weeks was
15 representing -- the interests of the defendant were
16 being represented by one individual in the firm with
17 regard -- specifically with regard to the allegation
18 that he murdered the victim while simultaneously still
19 representing the victim, because of the pendency at the
20 time of the indictment. The indictment had still --
21 the indictment against the victim had apparently still
22 -- still was pending at the time of -- at the time the
23 firm undertook the representation of the defendant.
24 That, the Supreme Court case said, was an actual
25 conflict, and the fact that the representation still

Colloquy

11

1 occurred was what caused the actual conflict, and
2 that's where the Supreme Court's opinion rested. And
3 that's only because it appears to me the indictment
4 still was outstanding at the time of the victim's
5 death, and what the court made absolutely and
6 abundantly clear is that the duty of representation on
7 the part of defense counsel didn't end upon the -- upon
8 the victim's death, so that there was simultaneous
9 representation that occurred.

10 Here the major distinction between the two is
11 that Mr. Gordon's representation of Mr. Phillips ended
12 45 days after the date of his sentencing in the drug
13 cases that Mr. Gordon represented Mr. Phillips on. The
14 sentence took place on April 24th, 1998 and that -- and
15 that representation ended, or the duty to represent him
16 ended 45 days thereafter, so sometime in June of 1998.

17 The events that bring us here today didn't
18 occur until December of 2001, a number of years, more
19 than three years later, and Mr. Gordon's representation
20 of Mr. Miller in this matter did not occur until the
21 summer of 2004, approximately six years after the
22 termination of the representation of Mr. Phillips.
23 Therefore I perceive no actual or appearance of any
24 conflict, but to the extent to which anybody would
25 believe that there could be a conflict in the exercise

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1 of caution as, in fact, mandated by the PIERREVIL case,
 2 we have conducted the appropriate hearing with no
 3 objection on the part of the State, and the State
 4 indicating it is now satisfied that no actual or
 5 perceived conflict exists, Mr. Miller under oath
 6 waiving any conflict and expressing his understanding
 7 and belief that -- that no conflict, in fact, exists
 8 and expressing his full confidence in Mr. Gordon, I
 9 believe, as he does, that his representation is as --
 10 without conflict, and that Mr. -- if there is any
 11 perceived conflict Mr. Miller had undertaken the waiver
 12 of that conflict knowingly, intelligently, with full
 13 understanding of the -- of the nature of the alleged
 14 conflict and has undertaken that waiver with full
 15 understanding of that.

16 So we now move into our WADE proceeding.

17 MR. DeMATTIA: Detective Murad Muhammad, Your
 18 Honor, is outside.

19 THE COURT: Okay. If you could bring him in.

20 M U R A D M U H A M M A D, STATE'S WITNESS, SWORN

21 COURT OFFICER: State your name of The Court,
 22 please.

23 THE WITNESS: Murad Muhammad.

24 THE COURT: Please be seated.

25 THE WITNESS: Good morning, Your Honor.

Muhammad - Direct

13

1 THE COURT: Good morning. Mr. DeMattia?

2 MR. DeMATTIA: Thank you, Judge. Your Honor,
 3 there is a sheet I made up last night marking exhibits.
 4 I gave one to Your Honor, I gave one to Mr. Gordon, and
 5 I have one to save time, so --

6 THE COURT: Okay.

7 MR. DeMATTIA: I gave it to --

8 THE CLERK: Yes, you did.

9 MR. DeMATTIA: Oh, I'm sorry. I gave it to
 10 your court clerk. I lied. I'm sorry.

11 THE CLERK: Do you have one, Judge?

12 THE COURT: No, I don't.

13 THE CLERK: Do you want to use this one for
 14 now?

15 THE COURT: Yes.

16 THE CLERK: And I'll make a copy.

17 THE COURT: Okay. Thank you.

18 DIRECT EXAMINATION BY MR. DeMATTIA:

19 Q Detective Muhammad, who do you work for?

20 A City of Newark Homicide Squad.

21 Q In what capacity?

22 A I'm a Homicide Investigator.

23 Q And what are some of your duties?

24 A Investigate deaths, auto fatalities and other crimes.

25 Q Did you get involved in the investigation

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SHEET 8

Muhammad - Direct 14

1 into the death of Mr. Timothy Phillips that occurred on
2 December 16th of 2001 in front of Toby's Lounge, 966
3 Bergen Street, City of Newark?
4 A Yes, that's correct.
5 Q I want to bring your attention to a couple of
6 days afterwards, on December 18th, 2001. We've
7 established you were investigating the death of Timothy
8 Phillips. Was there anyone else injured during the
9 course of that episode in front of Toby's Lounge?
10 A Yes.
11 Q Who was that?
12 A Stacy Davis.
13 Q All right. Now, jumping two days ahead from
14 December 16th to December 18th, did you come into
15 contact with Mr. Stacy Davis?
16 A Yes.
17 Q Who were you with?
18 A Investigator Ben Powell.
19 Q All right. And where is -- where is Ben
20 Powell today?
21 A He expired. He died.
22 Q He was involved in a motorcycle accident last
23 year. He's no longer available.
24 A That's correct.
25 Q What was your purpose of going to see Mr.

Muhammad - Direct 15

1 Davis?
2 A To hear his version of what occurred and to see if
3 he could make identification of the suspect.
4 Q Where was Mr. Davis located at the time on
5 December 18th of 2001?
6 A University Hospital. I believe it was E Yellow
7 Side.
8 Q Do you know what type of injury he did have?
9 A Yes.
10 Q What was --
11 A He had sustained a gunshot wound to the left leg.
12 Q When you approached Mr. Davis in the company
13 of Investigator Powell that day what was the condition
14 of Mr. Davis?
15 A He was in pain and appeared to be under some
16 medication.
17 Q What did you have with you when you went to
18 the hospital to see Mr. Davis?
19 A We had a photo display.
20 MR. DeMATTIA: Your Honor, the envelope has
21 been previously marked for identification and inside is
22 the contents, approximately six photographs.
23 BY MR. DeMATTIA:
24 Q Can you take out the photographs, review
25 them, and indicate if you recognize the contents of the

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Muhammad - Direct. 16

1 envelope S-1 for identification.

2 A Yes, it's the photos -- the photos, the six

3 photographs that we had.

4 Q And in the photo -- the six photographs that

5 you have is there any one particular person that was

6 let's called the target of the investigation at that

7 time?

8 A Yes.

9 Q And who was that?

10 A Naeem Miller.

11 Q All right. Do you see Mr. Naeem Miller in

12 court today?

13 A Yes. He's over there to the right of me in the

14 black sweater.

15 THE COURT: Indicating the defendant

16 BY MR. DeMATTIA:

17 Q By the way, does he look the same today as

18 he did in that photograph back in 2001?

19 A No. Similar.

20 Q Okay. What happened when you attempted to

21 show these photographs to Mr. Davis?

22 A Well, when he viewed the photographs when he came

23 upon Naeem Miller's photograph he became -- he started

24 to cry uncontrollably.

25 THE COURT: Let's take it a step back. How

Muhammad - Direct 17

1 did you show him the photos first?

2 THE WITNESS: He was shown photos one at a

3 time.

4 THE COURT: And what pictures do you recall

5 at what point you reached when you -- when he viewed

6 the defendant's picture?

7 THE WITNESS: No. 3.

8 THE COURT: Continue.

9 BY MR. DeMATTIA:

10 Q And what happened?

11 A At the view of the photograph of Naeem Miller he

12 started to cry.

13 Q Did you continue at that point?

14 A Well, we -- we talked to him a little bit, and we

15 asked him what was wrong, and he wouldn't speak. He

16 just continued to cry, and we decided -- We told him

17 that we would be back. We retreated and we told him

18 we'd come back at another time.

19 Q Okay. So no identification was made.

20 A No.

21 Q How did you construct that particular

22 array/sequential display?

23 A Well, it was six photos and they were shown in

24 sequence of order from 1 to 6, and he viewed them one

25 at a time.

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Muhammad - Direct / Cross 18

1 Q And in constructing that photo array did you
2 attempt to do anything in terms of continuity or
3 descriptions of actors?
4 A Yes, we put everybody of similar characteristics.
5 Q Such as?
6 A Hair, beard, complexion.
7 Q And what photograph in that six-photograph
8 array is Naeem Miller's photograph marked anything for
9 identification on the back of it?
10 A Yes.
11 Q And what is that?
12 A It's No. 3.
13 Q And does it have an identification sticker
14 for today's purposes?
15 A Yes, it does.
16 Q And that is S-21A for identification?
17 A Yes, that's correct.
18 MR. DeMATTIA: I have no further questions,
19 Judge.
20 THE COURT: Mr. Gordon?
21 MR. GORDON: Thank you, Your Honor.
22 CROSS-EXAMINATION BY MR. GORDON:
23 Q Detective, you just testified that Naeem
24 Miller was the target of this procedure that you
25 undertook when you went to see Stacy Davis that day,

Muhammad - Cross 19

1 December 18th, 2001?
2 A Yes.
3 Q And when you say target what do you mean?
4 A He was a suspect.
5 Q And how long at that point in time when you
6 went to see Mr. Davis had you been assigned to this
7 case?
8 A I received this case on I believe it was the 17th.
9 Q Of December of 2001?
10 A Yes.
11 Q And you say you received it. Did someone
12 assign it to you?
13 A Yes.
14 Q Who was that?
15 A A supervisor.
16 Q Who was that?
17 MR. DeMATTIA: Objection, Judge, with regard
18 to limited purposes of a WADE hearing?
19 MR. GORDON: Judge, I'd like to be heard
20 outside the presence of the witness at sidebar, if I
21 may, if The Court's entertaining the objection at this
22 point.
23 THE COURT: Objection is overruled but, you
24 know, I'll give you a little bit of liberty here, Mr.
25 Gordon, but let's wrap it up, okay?

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SHEET 11

Muhammad - Cross

20

1 MR. GORDON: Just some -- just some
2 background so we --
3 THE COURT: I understand.
4 MR. GORDON: -- get to the issues at hand.
5 THE COURT: Yes.
6 BY MR. GORDON:
7 Q And again, who was it who assigned you the
8 case?
9 A My supervisor.
10 Q Who was that?
11 A I can't recall.
12 Q And were you to work in conjunction with any
13 particular person on this assignment of this case or
14 no?
15 A Repeat the question.
16 Q Were you to work with any particular person
17 or persons on this investigation after you were
18 assigned it?
19 A Yes.
20 Q Who was that?
21 A Investigator Ben Powell.
22 Q And prior to going to the hospital on
23 December 18th of 2001 did you do anything to
24 familiarize yourself with the circumstances surrounding
25 the death of the decedent in this case?

Muhammad - Cross / Sidebar

21

1 MR. DeMATTIA: Your Honor, I object as to
2 the, again, limited scope of the actual identification
3 or attempted identification procedure.
4 MR. GORDON: Judge, I'd like to be heard at
5 sidebar.
6 THE COURT: I think I understand what's going
7 on.
8 MR. GORDON: May I be heard?
9 THE COURT: Okay. Let's make it quick.
10 (Sidebar)
11 MR. GORDON: Judge, the issue in a WADE
12 hearing is to determine if any impermissible
13 suggestiveness occurred in the presentation of the
14 evidence to the witness who was making the
15 identification. All I'm doing now is establishing a
16 very brief background and foundation of the knowledge
17 of the witness so that I can then question him about
18 what was in his mind when he attempted to make the
19 identification, otherwise I can't even get to meet my
20 burden.
21 THE COURT: I understand. Just don't turn it
22 into discovery.
23 MR. GORDON: Absolutely not.
24 THE COURT: Let's go.
25 MR. GORDON: Thank you, Your Honor.

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SHEET 12

Muhammad - Cross

22

(Sidebar concluded)

1 THE COURT: The objection is overruled.
2 Please continue, Mr. Gordon.

3 MR. GORDON: Thank you, Your Honor.

4 BY MR. GORDON:

5 Q Detective, after you were assigned the case
6 on December 17th did you do anything at all to
7 familiarize yourself with the details of the case?

8 A Yes.

9 Q And can you tell us just briefly what you
10 did?

11 A Read reports.

12 Q Anything else?

13 A And I spoke with Investigator Powell.

14 Q Were there any statements that had been taken
15 at that time when you were assigned the case that you
16 reviewed?

17 MR. DeMATTIA: Objection as to the scope of
18 again the investigation?

19 THE COURT: Overruled, but let's speed it up.

20 BY MR. GORDON:

21 Q You may answer, Detective.

22 A Did I review statements?

23 Q Yes.

24 A Yes.

Muhammad - Cross

23

1 Q And to the best of your knowledge at the time
2 that you went to see Mr. Davis had you reviewed all of
3 the statements that you were aware of existed at that
4 time?

5 A I believe so.

6 Q And had you reviewed all of the reports that
7 you believed had been generated and were in existence
8 at that time?

9 A Yes.

10 Q When you went -- I'm sorry. So on December
11 17th, after you were assigned, did you in fact go to
12 the scene of the shooting?

13 A I believe so.

14 Q Were you in the company of Investigator
15 Powell?

16 A Yes.

17 Q While you were there did you, in fact, speak
18 to several people in the area about the shooting?

19 A Yes.

20 Q You -- you canvassed the area and attempted
21 to get further information, correct?

22 A Yes.

23 Q And at that time did you obtain any further
24 information that you felt was important to develop a
25 target of the investigation?

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SHEET 13

Muhammad - Cross

24

1 A On that day?

2 Q on December 17th of 2001?

3 A I can't recall.

4 Q Did you generate a report in this case?

5 A Yes.

6 Q Do you have a copy of it in front of you?

7 A No, I do not.

8 Q Did you review it prior to testifying today
9 and any time in the recent past?

10 A Yes.

11 Q Approximately when was that that you reviewed
12 your report?

13 A Maybe last week.

14 Q Last week?

15 MR. GORDON: Counsel, has this been marked?

16 MR. DeMATTIA: It's been marked, Your Honor,
17 but I object to him confronting him with the report
18 again for the limited purpose of the identification
19 process itself. I know Your Honor said you would give
20 him leeway into background, but I object to the
21 extensive background investigation.

22 MR. GORDON: Judge, if I may now, the witness
23 has indicated he doesn't -- he indicated earlier he had
24 a target in the investigation when he saw Mr. Davis,
25 which was one day later than we're discussing now,

Muhammad - Cross

25

1 December 17th, 2001. Obviously at some point he
2 developed information which in his mind made Naeem
3 Miller a target. I've asked him now if he recalls when
4 he went to the scene if he got information that led him
5 to believing that there was a viable target. He
6 indicated he doesn't remember. Now he's authored a
7 report in this case. I'm going to ask him if viewing
8 it will refresh his recollection about that question.

9 THE COURT: Except I don't see what the
10 relevance is. It seems to me that he has already
11 indicated that he -- for the purpose of this proceeding
12 he's indicated that he -- he knew who Mr. Miller was,
13 he had made a determination that Mr. Miller was a
14 suspect. Even further, from at least my understanding
15 of the terms, that Mr. Miller was a target. Now,
16 you've established that and you've established that
17 that's what is in his mind. I don't know what all this
18 is going to add to the conclusion that Mr. Miller was a
19 target. Clearly that's relevant to this proceeding
20 that he had a determination that he was a target. How
21 he came about developing the information to determine
22 he was a target I don't see the relevance.

23 MR. GORDON: Well, Your Honor, if I may --
24 and, again, I'll answer in limited fashion in front of
25 the witness, but -- and it's brief, Your Honor. It

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Muhammad - Cross

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1 would have been done in --

2 THE COURT: Well, then do it. Let's go. I
3 don't see the relevance but I'll give you the leeway.

4 MR. GORDON: Thank you, Your Honor.

5 THE COURT: But you're taking advantage of
6 that, Mr. Gordon.

7 MR. GORDON: I'm not trying to, Your Honor,
8 at all.

9 THE COURT: Let's -- let's --

10 MR. GORDON: I'm simply trying to establish a
11 pattern for a foundation of an argument that I'm going
12 to make at the conclusion of the hearing.

13 THE COURT: Okay. We're arguing about it
14 more than -- in more time than it would take to
15 actually do it.

16 MR. GORDON: I couldn't agree more, Your
17 Honor.

18 THE COURT: So let's do it.

19 MR. GORDON: Let's see. If this document has
20 already been marked we won't take time to mark it
21 again.

22 THE COURT: Can you give us some help here,
23 Mr. DeMattia? Do you have a marked -- what number it's
24 been marked?

25 BY MR. GORDON:

Muhammad - Cross

27

1 Q Detective, I'm going to show you what's been
2 marked S-2 for identification and ask you to take a
3 look at that. Let me know when you're finished looking
4 at it, please?

5 A I'm done.

6 Q All right. Do you recognize what that is?

7 A Yes.

8 Q What is that?

9 A Is the report that I submitted.

10 Q Is the report that you generated in this --
11 in this investigation, am I correct?

12 A That's correct.

13 Q And I want to direct your attention to Page 2
14 of the report where you indicated some activity that
15 you and Investigator Powell engaged in on December
16 17th, 2001. Can you read this paragraph that I'm
17 pointing to and let me know when you're finished?

18 A Yes.

19 Q Does reading that refresh your recollection
20 as to what, if anything, happened that led you to think
21 of Naeem Miller as a target in this investigation?

22 A As to what, what the paragraph says?

23 Q I'm asking you if reading that refreshes your
24 memory about what it was that led you to find Naeem
25 Miller to be a target of this investigation?

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Muhammad - Cross

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1 A Talked to witnesses, information from witnesses.

2 We talked to several people in the area.

3 Q And based upon that you then considered Naeem
4 Miller to be a target, correct?

5 A Yes.

6 Q And did you make any notation of the identity
7 of any of the witnesses that you spoke to that led you
8 to that important information?

9 A Well, they weren't witnesses. They were people
10 who gave me information who the target was.

11 Q And did you know at that time what the source
12 of any of their information was?

13 MR. DeMATTIA: Objection, Judge, as to the
14 inquiry, again for the limited purposes of this
15 hearing.

16 THE COURT: Sustained.

17 BY MR. GORDON:

18 Q Once you became armed with that information
19 you then went and obtained a photograph of Naeem
20 Miller, correct?

21 A Yes.

22 Q By the way, at that time had you learned
23 whether or not anyone else had spoken to Stacy Davis
24 about the events of December 16th of 2001?

25 MR. DeMATTIA: Objection to that question,

Muhammad - Cross

29

1 again, for the limited purpose of this hearing, Your
2 Honor.

3 THE COURT: Sustained.

4 BY MR. GORDON:

5 Q Once you spoke to these people that day,
6 December 17th, based upon the information that they
7 gave you, you felt that Naeem Miller was a target,
8 right? Correct?

9 A With the information, yes.

10 Q When you came to that conclusion did you have
11 any information about anything -- any investigation
12 that had been done prior to that so put together with
13 that information that made you personally believe that
14 Naeem Miller was a target?

15 MR. DeMATTIA: Objection, Judge. He's again
16 fishing for discovery.

17 THE COURT: Overruled. Answer -- just answer
18 the question yes or no.

19 THE WITNESS: No.

20 BY MR. GORDON:

21 Q You obtained a photograph of Mr. Miller --
22 By the way, where did you obtain that photograph from?

23 A From the BCI, Sheriff's Department.

24 Q And when you went on December 18th, 2001 to
25 visit Mr. Davis you had also brought with you the five

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Muhammad - Cross

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1 other photographs which you identified earlier,
2 correct?

3 A That's correct.

4 Q Did you personally make the decision to place
5 those five photographs in front of Mr. Davis along with
6 Naeem Miller's photo?

7 A Repeat the question?

8 Q Did you personally make the decision to
9 construct the photo array with those specific other
10 five photos that you joined with Mr. Miller's photo?

11 A No, me and Investigator Powell.

12 Q So you did along with Investigator Powell.

13 A That's correct.

14 Q Is that fair to say? Now, when you went to
15 the hospital and you confronted Mr. Davis you indicated
16 earlier that he appeared to be in some pretty
17 significant pain from the gunshot wound, right?

18 A Yes.

19 Q And you indicated that he appeared to be
20 under some medication, is that correct?

21 A Yes.

22 Q Do you know what medication he was under?

23 A No, I do not.

24 Q What was it about what happened that made you
25 believe he was under medication?

Muhammad - Cross

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1 A I believe he had an IV bag run into him.

2 Q And did you make any notation of that in your
3 report? You -- you didn't, did you?

4 A That's correct.

5 Q Did you ask him any questions about the
6 medication specifically?

7 A I don't recall.

8 Q Did you know what effect, if any, the
9 medication was having on his ability to recollect or
10 understand what you were saying to him at that time?

11 A He understood what I was saying.

12 Q He was able to understand you, is that
13 correct?

14 A That's correct.

15 Q Now, you indicated at that time that you
16 believe Naeem Miller was a suspect. What, if anything,
17 did you tell Stacy Davis about Naeem Miller at that
18 time?

19 A Nothing.

20 Q Did you indicate that you had done some
21 investigation prior to going there?

22 A No, I did not.

23 Q Did you ask him if he had spoken to anybody
24 else about whether or not he recognized the shooter or
25 could identify the shooter?

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Muhammad - Cross

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1 A I could have. I'm not sure.

2 Q So it's fair to say that when you went to see
3 Naeem Miller you didn't know if he had told anyone else
4 whether or not he could identify the shooter, is that
5 correct?

6 A You mean Stacy Davis, not Naeem Miller.

7 Q Stacy Davis. When you went to see him you
8 weren't sure if he had told anyone previous to that he
9 could or couldn't make an identification, is that
10 correct?

11 A No, that's not correct.

12 Q Well, did you believe that he had told
13 somebody that he could make an identification?

14 A That's not what you're saying. You asked me prior
15 to that did he indicate to somebody else that he could
16 not I.D.

17 Q To the best of your knowledge had he done
18 that?

19 A In a report, yes.

20 Q What report was that?

21 A It wasn't my report. I believe it was Detective
22 -- another detective's report.

23 Q So is it -- is it fair to tell the judge then
24 that when you approached Mr. Davis to begin this
25 identification procedure in the hospital you already

Muhammad - Cross

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1 were aware of the fact that he had told somebody else
2 in law enforcement, and whomever that was, that he
3 hadn't seen the shooter or could not make an
4 identification, is that correct?

5 A Yes.

6 Q And when you went there you indicated you did
7 not say anything to him about Naeem Miller. Did you
8 indicate to him that you had learned from the street
9 that Naeem was a possible shooter in the case?

10 A No, I did not.

11 Q When you saw him in the hospital you began
12 showing photos one at a time, am I correct?

13 A That's correct.

14 Q And he never made an identification at that
15 time, is that correct? He became too upset.

16 A When he viewed Naeem Miller's photo, that's
17 correct.

18 Q And I believe you indicated he started to
19 cry, is that correct?

20 A Yes.

21 Q All right. And at any point in time that day
22 did you ask him to complete any photo identification
23 instruction form?

24 A No.

25 Q Do you know what that is, a photo

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Muhammad - Cross

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1 identification instruction form?

2 A A form that goes with the photo I.D.'s.

3 Q You're aware of that based on your
4 experience, correct?

5 A Yes.

6 Q I mean, that's a document that you sometimes
7 at your discretion might use when you go to someone and
8 ask them to do an identification, is that correct?

9 A To the best of my knowledge I believe that the
10 display photo identification has been changed.

11 Q Well, I'm not asking you now if it's been
12 changed. I'm not asking you about any guidelines. I'm
13 just asking you if at the time you went on December
14 18th of 2001 to Stacy Davis if you were familiar with
15 what that form was, a photo display instruction form.

16 A Yes.

17 Q Okay. And is that something that you in your
18 experience sometimes at your discretion would use when
19 you went to a potential identifier, a person who you
20 were asking to identify someone from a photo array,
21 would you use that form?

22 A The form that you're referring to is a form where
23 you would use six windows. You do it with six windows
24 or you could do it with six photographs. And with the
25 six windows the form is on the back of the display, and

Muhammad - Cross

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1 with the six photos --

2 THE COURT: That's not responsive, Detective.
3 The question is are you aware of a form that you
4 sometimes use at your discretion for purposes of
5 conducting a photo identification procedure?

6 THE WITNESS: Not with that.

7 THE COURT: Any form.

8 THE WITNESS: Yes.

9 THE COURT: Next question.

10 BY MR. GORDON:

11 Q And are you telling us now that that
12 identification form that I'm referring to -- and I
13 believe you're indicating you understand what that is
14 -- are you telling us that that's not used in a
15 situation where you present sequential photos one at a
16 time to a witness?

17 A No, that's not what I'm saying.

18 Q Okay. Well, let's -- Maybe I confused you.
19 Let me start again and say you are familiar with the
20 form that I'm talking about, the photo display
21 instructions, correct?

22 A I have to refer to the form, please.

23 Q Okay. Well, let me ask you this.

24 MR. GORDON: I'll withdraw that question
25 then, Your Honor, and ask you --

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Muhammad - Cross

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1 THE COURT: Thank you.

2 BY MR. GORDON:

3 Q -- and ask you this, Mr. Davis (sic). Have
4 you ever seen a photo display report form?

5 A I'm Detective Muhammad. That's correct.

6 Q Detective Muhammad, have you seen that?

7 A Yes.

8 Q And is that something that prior to December
9 18, 2001 you had utilized when going to a witness to
10 see if they can make an identification from some
11 photographs?

12 A I have to refer to the form.

13 MR. GORDON: Judge, I'm going to ask that
14 these be marked -- Well, have they been marked
15 already? Once again, Your Honor -- I apologize, Your
16 Honor. I didn't have an opportunity to review Mr.
17 DeMattia's list prior to the hearing, only just having
18 been handed it. Mr. DeMattia may have kindly already
19 marked these items.

20 MR. DeMATTIA: S-23.

21 MR. GORDON: All together or separately?

22 MR. DeMATTIA: All together, three pages.

23 BY MR. GORDON:

24 Q I'm going to show you now, Detective
25 Muhammad, what's been marked S-23 for identification

Muhammad - Cross

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1 and ask you to take a look at that and tell us when
2 you're through looking at it.

3 A Okay.

4 Q What's in front of you are three pages,
5 correct?

6 A That's correct.

7 Q And the first one is headed Essex County
8 Prosecutor's Office Photo Display Instructions,
9 correct?

10 A That's correct.

11 Q Without regard to what's been printed about a
12 specific case in there do you recognize the printed or
13 the typed information on that form as being a form you
14 had seen prior to December 18, 2001?

15 A Yes.

16 Q And in fact the first line of that form
17 indicates, quote: "In a moment I will show you a
18 number of photographs one at a time." End quote. Is
19 that correct?

20 A Yes.

21 MR. DeMATTIA: Your Honor, I object at this
22 point to going over these three forms, again unless
23 it's relevant to suggestiveness or suggestivity at the
24 particular time he showed them to the witness and there
25 was no identification made.

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Muhammad - Cross

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1 THE COURT: It is relevant but we're going a
2 long way around getting to the point. There are those
3 forms, he was aware of the forms and he didn't use
4 them, right? Isn't that the point you're trying to
5 make?

6 MR. GORDON: To some degree, yes, Your Honor.

7 THE COURT: Please can we move on?

8 MR. GORDON: I'm doing the best I can.

9 THE COURT: I mean, I didn't just fall off
10 the turnip truck. I understand.

11 MR. GORDON: Thank you, Judge.

12 THE COURT: Thank you.

13 BY MR. GORDON:

14 Q So, again, you've seen that form. That's a
15 form that's used with sequential photo presentations to
16 witnesses, correct?

17 A Yes.

18 Q And, in fact, on December 18th, 2001 when you
19 went to Mr. Davis you never showed him photo display
20 instructions and have him fill out that form, correct?

21 A That's correct.

22 Q And, in fact, you never noted in any report
23 which photographs, including Mr. Miller's, were
24 actually shown to Mr. Davis at that time, is that
25 correct?

Muhammad - Cross / Argument - DeMattia

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1 A Correct.

2 MR. GORDON: Thank you. I have nothing
3 further, Your Honor.

4 THE COURT: Mr. DeMattia?

5 MR. DeMATTIA: I have nothing further, Your
6 Honor.

7 THE COURT: Thank you, Detective. For the
8 moment you're excused.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: You'll be back.

11 THE WITNESS: Yes.

12 THE COURT: Okay. Mr. DeMattia, it's your
13 burden. Do you have anything to add?

14 MR. DeMATTIA: Just based on the testimony
15 from Detective Muhammad with regard to the attempted
16 identification with Mr. Stacy Davis, the witness, on
17 December 18th, 2001 he attempted to show the
18 photographs to Mr. Davis. Based on his perception --
19 and he was in the company of Ben Powell -- who we have
20 established is no longer available, went ahead, showed
21 him photographs, was aware of his condition, saw what
22 was occurring during the presentation of the
23 photographs, determined that it was not the appropriate
24 time to continue the identification, had given him no
25 prior instructions with regard to who's a target or

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Argument - DeMattia

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1 what his investigation uncovered because that may have
 2 been a future problem if he had done so. Since he did
 3 not do so it is not a problem. He retreated when he
 4 saw that it was not the appropriate time to continue
 5 and left it at that, and then there was another
 6 identification time a couple of days later which, of
 7 course, there's no testimony to, but with regard to the
 8 suggestiveness or taint from this one, the facts, in
 9 the State's position, reveal none because no
 10 identification was made by the witness and there was
 11 nothing improper.

12 THE COURT: That being the case then you'll
 13 concede that this identification procedure is not one
 14 that would be offered to the jury as a process under
 15 which the defendant was identified?

16 MR. DeMATTIA: No, Your Honor, the most I
 17 would do is just ask him if he had contact with Mr.
 18 Davis on December 18th and if any identification was
 19 made, and there was no identification. I would not go
 20 through the process that it's tainted, he started
 21 crying before the picture, at the picture of Naeem
 22 Miller, or after the picture of Naeem Miller, because I
 23 don't think it's relevant because no identification and
 24 no inferences. It would be prejudicial. No inferences
 25 should be made from that type of information. But I do

Argument - DeMattia / Gordon

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1 intend to indicate to Detective Muhammad if he had
 2 talked to Mr. Davis on the 18th and if any
 3 identifications were made, which none were, and I will
 4 not go into the specifics of it.

5 THE COURT: Okay. So you're not going to ask
 6 the jury to -- to --

7 MR. DeMATTIA: Infer that that was some type
 8 of identification, no, sir.

9 THE COURT: Mr. Gordon?

10 MR. GORDON: Thank you, Your Honor. Your
 11 Honor, I'm going to rely on the papers that I submitted
 12 and just simply say that the chain of events from Mr.
 13 Davis indicating that at least this detective has
 14 indicated for the record, he was aware of the fact that
 15 Mr. Davis had indicated earlier to one of the
 16 detectives in the case that he didn't see the shooter
 17 and couldn't make an identification, and then they go
 18 to the street on December -- That was on December
 19 16th. On December 17th this -- this detective goes to
 20 the street, hears apparent hearsay information, or
 21 street talk, which led him to for the first time hear
 22 about Naeem Miller, leads him then to go get a
 23 photograph. He goes to Mr. Davis, he sees Mr. Davis is
 24 in pain and apparently under medication, he doesn't
 25 make inquiry about, you know, whether that's affecting

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Argument - Gordon

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1 the witness or not. He makes assumptions about it,
 2 knowing that Mr. Davis already said he can't make an
 3 identification. I think there's suggestibility in the
 4 fact that he's now coming to him with photographs and
 5 showing them to him. He indicated for the record that
 6 he did not give any information to Mr. Davis prior to
 7 him viewing the photographs. I think the issue of not
 8 using the forms raises the question. My argument has
 9 nothing to do with guidelines or anything -- what a
 10 guideline was at that time or not, whether he deviated
 11 from the guidelines. But I think the State will
 12 concede that three days later when they go to make the
 13 identification or ask Mr. Davis to make another
 14 identification, or attempt to, they go through a whole
 15 different procedure where they give him instructions,
 16 they show him a form, they have him fill out the form.
 17 There's notations on which photos are shown to him, and
 18 I think -- I think it's suspect that on the first day
 19 there's no notations as to that fact, and the only
 20 information they have now is that the street says Naeem
 21 Miller is the shooter, and I think you can draw
 22 inferences from that in that there's some question of
 23 credibility with this witness as in his demeanor and
 24 the way he responded to some of my questions as to
 25 whether or not he undertook the procedures that we

Argument - Gordon / Decision

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1 would hope he would undertake, not by way of any
 2 guidelines but just to ensure The Court and the
 3 integrity of the process that he, in fact, did not give
 4 any form of suggestiveness. Other than that I'll rely
 5 on the papers and submit to The Court.
 6 THE COURT: Thank you. In addition, you
 7 know, there -- there are -- The manner by which this
 8 detective undertook this identification procedure left
 9 a substantial amount to be desired. He didn't use the
 10 forms. It wasn't a detective unconnected with the case
 11 that -- that conducted the identification procedure.
 12 He did -- I need to see the pictures, if somebody
 13 would give them to me. But wisely, I think, the State
 14 is not offering that quote-unquote "identification"
 15 procedure as an identification procedure. The process
 16 is such that -- I don't know any law that says that
 17 simply because at some point in time a victim indicates
 18 that he can't make an identification doesn't mean that
 19 investigators can't show him a series of photographs.
 20 That being the case there is nothing that prevents them
 21 from approaching a witness and seeking to determine at
 22 that point whether an identification is made. It goes
 23 to weight, not to admissibility.
 24 But that really isn't even the point in this
 25 case at this point in time. The question is whether or

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Decision / Colloquy

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1 not the actual identification procedure that is being
 2 offered by the State is, in fact, a proper one pursuant
 3 to WADE. And there are no indication to me that there
 4 was any improper suggestiveness with regard to the
 5 interview that was conducted by Detective Muhammad with
 6 Mr. Davis in the hospital that in any way impugned, or
 7 impaired, or tainted the -- the subsequent
 8 identification procedure.

9 I have reviewed the pictures that are
 10 contained in S-21 for identification. There's nothing
 11 about the photographs that are unduly suggestive and I
 12 would not -- and there's nothing in the testimony that
 13 I heard that I find to be totally and completely
 14 credible that indicates that there was any
 15 suggestiveness in the procedure itself. That being
 16 said, however, there were -- The appropriate
 17 protections were not provided and, as such, happily the
 18 State is not seeking to introduce that procedure as a
 19 matter by which the defendant was identified. And I
 20 don't find any improper taint or suggestiveness that
 21 arose from that procedure that impairs the State's
 22 ability to introduce the subsequent identification
 23 procedure that was conducted.

24 MR. GORDON: Thank you for that ruling, Your
 25 Honor. I would just ask then that in light of the fact

Colloquy

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1 that the State is not going to seek to elicit testimony
 2 about the first identification procedure that the
 3 witness Stacy Davis be instructed prior to taking the
 4 stand of The Court's ruling in that matter or the
 5 State's offer so that he doesn't mistakenly confuse the
 6 two or begin to refer to the earlier interview by
 7 detectives when -- when we're apparently all in
 8 agreement that that would be inappropriate.

9 THE COURT: So noted, Mr. Gordon. Mr.
 10 DeMattia I'm sure was planning on doing that anyway,
 11 but please do so.

12 MR. DeMATTIA: Quite frankly, upon my
 13 interview he had no recollection of it at all.

14 THE COURT: Which is no -- no surprise.
 15 Let's -- We've left the jury out in the hall much too
 16 long. I'm going to step off. Let's bring them all in.
 17 Put them where they originally -- originally were.

18 MR. GORDON: Judge, there's that one other
 19 issue, too, about reciting to them the name of the one
 20 police officer.

21 THE COURT: Yes. Okay.

22 (Tape off. Tape on.)

23 (Jurors present in the courtroom)

24 THE COURT: Please be seated. I apologize
 25 for the delay. As I told you, we had a couple of

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Colloquy / Sidebar

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1 things that we had to do before the jury was sworn in
 2 this case. It took us a little bit longer than we
 3 anticipated so I apologize. You'll see that from time
 4 to time that will happen. Our goals aren't always met.
 5 Things go longer than they are supposed to or expected,
 6 and sometimes, believe it or not, things actually go
 7 more quickly than we anticipate, so sometimes we get to
 8 start on time, sometimes we don't. Sometimes we finish
 9 on time, sometimes we don't. Sometimes we finish early
 10 on a given day depending upon what's happening at any
 11 given time, so I apologize.

12 One more time, however, before -- before
 13 you're sworn, is there anybody who would like to speak
 14 to me at sidebar before taking the oath? Juror No. 13,
 15 Ms. Little, please step up to sidebar.

(Jury Selection)

(Sidebar)

16 MR. GORDON: Judge, just another friendly
 17 reminder about the name of the witness.

18 THE COURT: All right. Thank you.

19 MR. GORDON: If I'm not mistaken there may be
 20 at least one witness in the trial who is currently in
 21 the courtroom. I know we're not on the testimonial
 22 phase now but maybe in an abundance of caution the
 23 witness should not be in the courtroom.
 24
 25

Sidebar / Colloquy

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1 THE COURT: You're requesting standard
 2 sequestration.

3 MR. GORDON: Yes, Judge. We didn't discuss
 4 that, but I do -- we would request a mutual
 5 sequestration order.

6 MR. DeMATTIA: Okay.

7 THE COURT: Now that's in effect, sure. It's
 8 in effect now. I'll do the name right now. Just for
 9 the record, is anybody requesting that as a result of
 10 that comment from that juror is anybody asking that
 11 their challenges be reopened?

12 MR. GORDON: No.

13 THE COURT: Okay.

14 (Sidebar concluded)

15 THE COURT: One other thing, ladies and
 16 gentlemen. There is an individual whose name wasn't
 17 mentioned originally when we gave you the list of
 18 people who might be mentioned during the course of the
 19 trial, who now I gather his name may be mentioned at
 20 some point, from the Newark Police Department a Michael
 21 DeFabio. Is there anybody here who knows Michael
 22 DeFabio. Seeing none may we have the jury sworn?

23 (Jury sworn)

24 THE COURT: Please be seated. Ladies and
 25 gentlemen, those of you who are in the remainder of the

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Colloquy / Jury Instructions

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1 jury pool I apologize for having to drag you in here
 2 this morning but it was something that I was required
 3 to do in the event it became necessary to continue the
 4 process of jury selection. We now have a jury sworn to
 5 hear this case and you are therefore excused from this
 6 proceeding. Now, remember, I have no authority to
 7 excuse you from jury duty, but you may now return to
 8 Jury Control on the 4th floor for further instruction.
 9 Thank you very much.

10 Ladies and gentlemen of the jury, you've been
 11 selected as the jury in this case. As you know, it's a
 12 criminal case and to assist you in better understanding
 13 your functions and duties I'll tell you how the case
 14 will proceed. You are the sole judges of the facts.
 15 Your determination of the facts is to be based solely
 16 upon the evidence submitted during the course of the
 17 trial. When I use the term evidence I mean the
 18 testimony of witnesses who will testify and any
 19 exhibits which may be marked into evidence and which
 20 will be taken into the jury room for your review at the
 21 end of the case.

22 The first order of business will be the
 23 prosecutor's opening statement. In the opening
 24 statement the prosecutor will present the State's
 25 contentions and will outline what he expects to prove.

Jury Instructions

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1 Following that the defense counsel, if he chooses, will
 2 make an opening statement. What is said in an opening
 3 statement is not evidence. The evidence will come from
 4 the witnesses who will testify and from whatever
 5 documents or tangible items that are received in
 6 evidence. During the trial the attorneys may make
 7 objections as evidence is offered, or they may address
 8 motions to me. They have a right and indeed a duty to
 9 make objections and motions when it seems to them to be
 10 proper to do so. I have a duty to rule upon any
 11 objections and motions based upon the law. If you hear
 12 me say that an objection is overruled that means I'm
 13 ruling against the attorney making the objection. If I
 14 say the objection is sustained I'm ruling in favor of
 15 the attorney making the objection. Anything excluded
 16 by me is not evidence and must not be considered by you
 17 in your deliberations.

18 Sometimes these evidence questions or legal
 19 questions will be heard in your presence in open court,
 20 other times at sidebar, or you may be excused to go
 21 into the jury room so we can discuss the issue in open
 22 court.

23 I realize that being confined in the jury
 24 room for any length of time is not very pleasant, but I
 25 ask your indulgence and patience. I'm sure you realize

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1 that these legal arguments must be heard outside your
 2 presence. You should not conclude that because I rule
 3 one way or another that I have any feelings about the
 4 outcome of the case. I do not. But even if I did you
 5 would have to disregard them since it is you who will
 6 be the sole judges of the facts.

7 During the trial from time to time there
 8 shall be recesses. During any of the recesses I direct
 9 that you not discuss the case among yourselves, and
 10 when we recess overnight you must not discuss the case
 11 or the testimony with any members of your family or
 12 with any other persons. The reason, of course, is that
 13 you should not begin any deliberations until the entire
 14 case has been concluded, that is until you've heard all
 15 the witnesses, the final arguments of counsel, and my
 16 instructions as to the law. It would be improper for
 17 any outside influence to intrude upon your thinking.
 18 If anyone should attempt to discuss the case with you
 19 you should report the fact to me or my staff
 20 immediately. If you have a cell phone, pager or other
 21 communication device you must turn that device off
 22 while in the courtroom. Similarly, you must turn off
 23 cell phones, pagers, and other communication devices
 24 and cannot use them for any purpose while in the jury
 25 deliberation room. You'll be given a telephone number

Jury Instructions

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1 at which you can be contacted during the trial. Unless
 2 I otherwise instruct you may only use cell phones,
 3 pagers and other communication devices when you are
 4 outside the jury deliberation room during recesses.
 5 Please be mindful of these instructions at all times.

6 During the trial you are not to speak to or
 7 associate with any of the attorneys, the witnesses, or
 8 the defendant, nor are they permitted to speak or
 9 associate with you. This separation should not be
 10 regarded as rudeness, but rather a proper precaution to
 11 ensure fairness to both sides. If anyone connected
 12 with this case, or any other person, approaches you or
 13 attempts to influence you in any way, do not discuss it
 14 with your fellow jurors. Simply tell the sheriff's
 15 officer and I will be notified immediately. Your
 16 deliberations should be based on the testimony in this
 17 case without any outside influence or opinions of
 18 relatives or friends.

19 Additionally I must instruct you not to read
 20 any newspaper articles pertaining to this case. I do
 21 not know if there will be any newspaper or media
 22 coverage of this trial, but you are instructed to
 23 completely avoiding reading or listening to any
 24 newspaper or media accounts, or listening to anyone
 25 else discuss them. I'm sure you can understand why

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1 this instruction is so important. Newspaper and media
 2 accounts are not evidence. They are often based upon
 3 second- or third-hand information, purely hearsay, not
 4 always accurate, and not subject to examination by the
 5 attorneys. I have no way to monitor you in this area
 6 but must rely upon your good faith and the fact that
 7 you have been sworn or affirmed to comply with the
 8 instructions of this court so that both sides may
 9 receive a fair trial.

10 Because this instruction is so important it
 11 is my duty to remind you of it at the end of each day's
 12 proceedings. Since you are the sold judges of the
 13 facts you must pay close attention to the testimony.
 14 It is important that you carry with you to the jury
 15 room not only a clear recollection of what the
 16 testimony was but also a recollection of the manner in
 17 which it was given. It will be your duty to pay
 18 careful attention to all the testimony. If you are
 19 unable to hear any witness I ask you indicate this to
 20 me by raising your hand so I may instruct the witness
 21 to speak louder or more clearly. As jurors you will be
 22 required to pass upon all questions of fact, including
 23 the credibility or believability of the witnesses.

24 You are not permitted to visit the alleged
 25 incident -- the scene of the alleged incident, do your

Jury Instructions

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1 own research, or otherwise conduct your own
 2 investigation. Your verdict must be based solely on
 3 the evidence introduced in this courtroom. Jurors are
 4 not permitted to take notes. Experience has shown that
 5 note taking is distracting. It's better to depend upon
 6 the combined recollection of all the jurors than upon
 7 notes taken by one or more of them.

8 At the conclusion of the testimony the
 9 attorneys will speak to you once again in summation.
 10 At that time they will present to you their final
 11 arguments based upon their respective recollections of
 12 the evidence. Again, this is not evidence but their
 13 recollection as to the evidence. It's your
 14 recollection as to the evidence presented that is
 15 controlling. Following summations you will receive
 16 your final instructions on the law from me and you will
 17 then retire to consider your verdict. You're not to
 18 form or express an opinion on this case but are to keep
 19 an open mind until you've heard all the testimony, have
 20 heard summations, have had the benefit of my
 21 instructions as to the applicable law and have been
 22 instructed to begin your deliberations.

23 It is your duty to weigh the evidence calmly
 24 and without bias, passion, prejudice or sympathy, and
 25 to decide the issues upon the merits. You as jurors

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1 should find your facts from the evidence adduced during
 2 the trial. Evidence may be either direct or
 3 circumstantial. Direct evidence means evidence that
 4 directly proves a fact without an inference and which
 5 in itself, if true, conclusively establishes that fact.
 6 On the other hand, circumstantial evidence means
 7 evidence that proves a fact from which the inference or
 8 the existence -- an inference or the existence of
 9 another fact may be drawn. An inference is a deduction
 10 of fact that may logically and reasonably be drawn from
 11 another fact or group of facts established by the
 12 evidence. It's not necessary that facts be proven by
 13 direct evidence. They may be proven by circumstantial
 14 evidence or by a combination of direct and
 15 circumstantial evidence.

16 Both direct and circumstantial evidence are
 17 acceptable as a means of proof. Indeed, in many
 18 circumstances circumstantial evidence may be more
 19 certain, satisfying and persuasive than direct
 20 evidence. In any event, both circumstantial and direct
 21 evidence should be scrutinized and evaluated carefully.
 22 A conviction may be based on circumstantial evidence
 23 alone or in combination with direct evidence provided,
 24 of course, that it convinces you of a defendant's guilt
 25 beyond a reasonable doubt.

Jury Instructions

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1 Conversely, if the evidence, whether direct
 2 or circumstantial, gives rise to a reasonable doubt in
 3 your mind as to the defendant's guilt, then the
 4 defendant must be found not guilty. Perhaps a simple
 5 illustration of the difference between direct and
 6 circumstantial evidence may prove to you to be helpful.
 7 Let's assume the proposition to be proved is whether or
 8 not it snowed during the night. Witness A gets on the
 9 stand and says I had trouble sleeping last night. I
 10 got up in the middle of the night, opened the drapes,
 11 looked out the window, and I saw the snow falling from
 12 the sky. Direct evidence of the fact that it snowed
 13 during the night. Witness B, on the other hand, had no
 14 trouble whatsoever sleeping during the night. Before
 15 she went to bed she got up to close the drapes, looked
 16 out the window, no snow falling from the sky, no snow
 17 on the ground, no snow anywhere. Closed the drapes,
 18 went to bed, slept through the night, got up in the
 19 morning to open the drapes. Got up, opened the drapes,
 20 looked out the window, no snow falling from the sky,
 21 but she looked down on the ground and the ground was
 22 snow-covered. Circumstantial evidence of the fact that
 23 it snowed during the night.

24 As judges of the facts you are to determine
 25 the credibility of the witnesses, and in determining of

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1 whether a witness is worthy of belief and, therefore,
 2 credible you may take into consideration various
 3 criteria. Among the criteria customarily considered
 4 are the appearance and demeanor of a witness; the
 5 manner in which the witness may testify; the witness's
 6 interest in the outcome of the trial, if any; the
 7 witness's means of obtaining knowledge of the facts;
 8 the witness's power of discernment, meaning the
 9 witness's judgment and understanding; the witness's
 10 ability to reason, observe, recollect and relate; the
 11 possible bias, if any, in favor of the side for whom
 12 the witness testifies; the extent to which, if at all,
 13 each witness is either corroborated or contradicted,
 14 supported or discredited by other evidence; whether the
 15 witness testifies with an intent to deceive you; the
 16 reasonableness or unreasonableness of the testimony the
 17 witness has given, whether a witness made any
 18 inconsistent or contradictory statements; any and all
 19 other matters and evidence which serve to support or
 20 discredit the witness's testimony to you.

21 During your deliberations you may ask what is
 22 the more reasonable, the more probable, or the more
 23 logical version. Inconsistencies or discrepancies in
 24 the testimony of a witness, or between the testimony of
 25 different witnesses, may or may not cause you to

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1 discredit such testimony. Two or more persons
 2 witnessing an incident may see or hear it differently.
 3 An innocent misrecollection, like failure of
 4 recollection, is not an uncommon experience. In
 5 weighing the effect of a discrepancy consider whether
 6 it pertains to a matter of importance or an unimportant
 7 detail, and whether the discrepancy results from
 8 innocent error or a wilful falsehood.

9 Now, Naeem Miller stands before you on an
 10 indictment found by the grand jury charging him with
 11 committing the crimes of murder, aggravated assault,
 12 unlawful possession of a weapon, and possession of a
 13 weapon for an unlawful purpose. As I said before, the
 14 indictment itself is not evidence of the defendant's
 15 guilt on the charges. The indictment is but a step in
 16 the procedure to bring the matter before The Court and
 17 jury for the jury's ultimate determination as to
 18 whether the defendant is guilty or not guilty of the
 19 charges stated in it. The defendant has pled not
 20 guilty to the charges. The defendant on trial is
 21 presumed to be innocent, and unless each and every
 22 essential element of the offense charged in a
 23 particular count of the indictment is proved beyond a
 24 reasonable doubt, the defendant must be found not
 25 guilty of the offense charged in that particular count.

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1 The reverse is also true. If each element of
 2 the offense charged in a particular count of the
 3 indictment is proved beyond a reasonable doubt the
 4 defendant must be found guilty of the offense charged
 5 in that particular count. The burden of proving each
 6 element of the offenses charged beyond a reasonable
 7 doubt rests upon the State and that burden never shifts
 8 to the defendant. It is not the obligation or the duty
 9 of a defendant in a criminal case to prove his
 10 innocence or offer any proof relating to his innocence.
 11 The State has the burden of proving the defendant
 12 guilty beyond a reasonable doubt.

13 Some of you may have served as jurors in
 14 civil cases where you were told that it's necessary to
 15 prove only that a fact is more likely true than not
 16 true. In criminal cases the State's proof must be more
 17 powerful than that. It must be beyond a reasonable
 18 doubt. The prosecution must prove its case by more
 19 than a mere preponderance of the evidence, yet not
 20 necessarily to an absolute certainty. A reasonable
 21 doubt is an honest and reasonable uncertainty in your
 22 mind about the guilt of the defendant after you've
 23 given full and impartial consideration to all the
 24 evidence. A reasonable doubt may arise from the
 25 evidence itself or from a lack of evidence. It's a

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1 doubt that a reasonable person hearing the same
 2 evidence would have. Proof beyond a reasonable doubt
 3 is proof, for example, that leaves you firmly convinced
 4 of the defendant's guilt. In this world we know very
 5 few things with absolute certainty. In criminal cases
 6 the law does not require proof that overcomes every
 7 possible doubt. If based on your consideration the
 8 evidence leaves you firmly convinced that the defendant
 9 is guilty of the crime charged in the particular count
 10 of the indictment you must find him guilty of the crime
 11 charged in that particular count.

12 If, on the other hand, you're not firmly
 13 convinced of the defendant's guilt of the crime charged
 14 in the particular count in the indictment you must give
 15 the defendant the benefit of the doubt and find him not
 16 guilty of the crime charged in that particular count.

17 You'll note that a jury of 14 has been drawn
 18 in this case. At the conclusion of the evidence and
 19 the charge of The Court there will be a random
 20 selection in which two jurors will be selected to act
 21 as alternates. The 12 remaining jurors will then
 22 deliberate and return a verdict. At this point we do
 23 not know who the alternates will be and whether or not
 24 their services will be utilized. Thus I direct that
 25 all jurors should pay equal attention to the evidence

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 1 as it is presented and to The Court's ruling which are
 2 applicable to the case. With that, ladies and
 3 gentlemen, are we prepared for opening statements?

4 MR. DeMATTIA: Yes, Judge.

5 MR. GORDON: Yes, Your Honor.

6 THE COURT: Okay. We will begin with the
 7 opening statement, as I indicated, from the State
 8 delivered to you on behalf of the State by Assistant
 9 Prosecutor Gregory DeMattia. Mr. DeMattia.

10 MR. DeMATTIA: Your Honor, Judge Vena, thank
 11 you, Mr. Gordon. Good morning, ladies and gentlemen of
 12 the jury. My name is Gregory DeMattia. I'm Assistant
 13 Prosecutor here in the Homicide Squad of the Essex
 14 County Prosecutor's Office. I'm the Assistant
 15 Prosecutor obviously responsible for the presentation
 16 of this matter before the jury.

17 Before we begin, as is always in my opening
 18 statements, I would like to once again read to you a
 19 little bit more slowly and more precisely the wording
 20 of the indictment that we have here. It's Indictment
 21 No. 2003-05-1830. It charges Naeem Miller -- the STATE
 22 VS. NAEEM MILLER -- Count 1, that the grand jurors of
 23 the State of New Jersey for the County of Essex, upon
 24 their oath, present that Naeem Miller, on the 16th day
 25 of December of 2001 in the City of Newark, in the

Opening Statement - DeMattia 61

1 County of Essex, aforesaid and within the jurisdiction
 2 of this court, did purposely, knowingly murder Timothy
 3 Phillips by his own conduct by shooting him, which is
 4 contrary to the provisions of 2C:11-3, a crime of the
 5 first degree, against the peace of this State, the
 6 government, and dignity of the same.

7 That Count 2, the grand jurors of the State
 8 of New Jersey for the County of Essex, upon their oath,
 9 present that Naeem Miller, on the 16th day of December
 10 of 2001 in the City of Newark, in the County of Essex,
 11 and within the jurisdiction of this court, did
 12 purposely, knowingly or recklessly, under circumstances
 13 manifesting extreme indifference to the value of human
 14 life, caused or attempted to cause serious bodily
 15 injury to Stacy Davis by shooting him, contrary to the
 16 provisions of 2C:12-1B, a crime of the second degree,
 17 against the peace of the State, the government and the
 18 dignity of the same.

19 Count 3, the grand jurors of the State of New
 20 Jersey for the County of Essex, upon their oath,
 21 present that Naeem Miller, on the 16th day of December
 22 of 2001 in the City of Newark, in the County of Essex,
 23 and within the jurisdiction of this court, knowingly
 24 and unlawfully did possess a certain firearm, a
 25 handgun, without first having obtained a permit to

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Opening Statement - DeMattia

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1 carry the same, contrary to 2C:39-5, a crime of the
 2 third degree, against the peace of this State, the
 3 government and dignity of the same.

4 And then the final count, Count 4, states
 5 that the grand jurors of the State of New Jersey for
 6 the County of Essex, upon their oath, present that
 7 Naeem Miller on the 16th day of December, 2001 in the
 8 City of Newark, County of Essex, and within the
 9 jurisdiction of this court, knowingly and unlawfully
 10 did possess a certain weapon, a handgun, with the
 11 purpose to use it unlawfully against the person or the
 12 property of another, contrary to 2C:39-4, a crime of
 13 the second degree against the peace of this State, the
 14 government, and dignity of the same.

15 As Judge Vena has appropriately told you, the
 16 grand jury indictment is not proof of anyone's guilt
 17 but the grand jury indictment accomplishes one, maybe
 18 two, things. It names a particular person, in this
 19 case Naeem Miller, who we have in court today, Naeem
 20 Miller charged with particular crimes, four crimes that
 21 the State alleges he committed on December 16th, 2001.
 22 And although this is no proof of guilt the State is
 23 required through its assistant prosecutor, who is me,
 24 to prove the elements to a petit jury of each of the
 25 crimes beyond a reasonable doubt and I welcome the

Opening Statement - DeMattia

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1 burden in this particular case. And quite frankly, the
 2 only way that a state or any attorney who has a burden
 3 of proof in any type of case can do his or her job is
 4 by presenting witnesses, which I intend to do on the
 5 witness stand, who were there. I can assure you on
 6 December 16th, 2001 I was not there, but people were
 7 there -- the police officers who investigated the
 8 crime, with the medical testimony in terms of Dr. Lila
 9 Perez, the County Coroner, coming in to --
 10 unfortunately in every homicide you have to have an
 11 autopsy cause of death and what not. There will be
 12 witnesses, my point, to be brought before you.

13 Now, Judge Vena briefly went over the job of
 14 the jurors, which I consider in any type of trial --
 15 well, criminal trial -- the most important people here
 16 are the 12 or 14 judges that we have in the box. Even
 17 though you don't have the black robe on you are the
 18 judges here, the judges of the facts of this case, that
 19 ultimately determine the outcome of the matter.

20 Now, how did you prepare to become these
 21 judges or the jurors in this matter? I'm sure that no
 22 one here took maybe Jury Duty 101 in high school or
 23 advanced jury duty, or advanced techniques of jury
 24 duty, because obviously there weren't any courses so no
 25 one took them. But you really you don't need those

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Opening Statement - DeMattia

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1 type of courses because, first of all, there are none.
 2 What you need is to bring into this courtroom what
 3 you've had since you were born and since you've
 4 developed into the person you are, the age you are,
 5 your ordinary common sense. That's all it is. There's
 6 nothing magical that when you walk through those doors
 7 all of a sudden someone snapped a finger and sprinkled
 8 special dust on you and you became a juror. Okay? It
 9 doesn't work like that because there's nothing magical
 10 about it. I'll tell you what you did leave out there
 11 -- we hope you left because we did do a pretty good job
 12 at picking our jury pool -- what you did leave is any
 13 preconceived notions, any prejudices, any biases
 14 against any particular individual, or any particular
 15 thoughts you had about the system, you did leave them
 16 outside the door, if you even had them, because there's
 17 no place for those type of preconceived biases or
 18 notions. You have to have an open mind and you have to
 19 be able to do your job fearlessly and impartially, so I
 20 know that you left them, if you even had them, on the
 21 other side of the door out there. That's one of the
 22 things that myself, and I'm sure even Mr. Gordon and
 23 the judge, has asked, to be fair and impartial.

24 So when you listen to the testimony, and the
 25 testimony is -- I'm not -- I'm not giving testimony

Opening Statement - DeMattia

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1 right now. I'm giving you my opening statement, which
 2 is I guess coming attractions, a preview, of what I
 3 expect to happen and I comment on the functions of the
 4 jurors. But what you do is you judge people as you
 5 would ordinarily judge people, judge the testimony, in
 6 your everyday life at work, at home, with any spouse,
 7 with younger children, with siblings, with your bosses.
 8 Again, nothing magical, the way you've been conducting
 9 your everyday life you've taken it and brought it with
 10 you as you sit here in the jury in your seats, judging
 11 credibility, judging if someone makes sense, if
 12 something they say makes sense, if something they say
 13 doesn't make sense, or if what they're saying is said
 14 because of certain prejudices or biases that they may
 15 have, if they do have. If they don't then you can
 16 judge them for whatever you think it's worth. And that
 17 -- that is all I'm asking you to do, is to keep an open
 18 mind during the course of the presentation of the
 19 witnesses in this matter.

20 Now, enough being said about that, what is
 21 this case about? And, again, what I say today at this
 22 particular point is not evidence because, again, I
 23 wasn't there but this is what I expect to develop
 24 during the course of the trial.

25 As you've heard the date, December 16th, 2001

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Opening Statement - DeMattia

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1 is the target date here. At approximately 2:30 in the
2 evening at a location at 966 Bergen Street, City of
3 Newark, there's a particular establishment located
4 there. I believe at one time it was called Roland's
5 Tavern, it might be at the time of the incident I think
6 it was referred to as Toby's Lounge, but there were
7 people in the place -- patrons, workers there -- and
8 you will find that during the course of the evening
9 there was a couple of people in particular, a Mr. Kevin
10 Phillips and his brother Timothy Phillips, among other
11 people in the -- in the establishment. It was crowded.
12 But at sometime during the evening, and I submit to you
13 the testimony should show, toward the closing hours it
14 seems that there developed some type of dispute between
15 a Mr. Kevin Phillips, the brother of Timothy, who is
16 our victim, but this Mr. Kevin Phillips had some type
17 of dispute with as to this date unknown person, unknown
18 persons, who may have been friends with this person,
19 but some type of dispute which became a fist-fight,
20 some type of dispute over dancing with a particular
21 young lady, if I'm not mistaken. A fist-fight
22 developed and Mr. Kevin Phillips was punched numerous
23 times. He may have punched someone numerous times.
24 But what had happened is the fight did come to an end,
25 they were escorted out and, as I said, I think it was

Opening Statement - DeMattia

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1 about closing time anyway, everyone was coming out of
2 the tavern or lounge at that particular time, including
3 now Mr. Timothy Phillips, who eventually was our
4 deceased victim in this matter. And upon Mr. Timothy
5 Phillips realizing what had happened to his brother --
6 I don't know if it's younger brother or older brother
7 -- but his brother Kevin Phillips, he became irritated
8 and while outside argued, yelled at unknown persons,
9 whether these persons were part of a fight or not,
10 because Mr. Kevin Phillips, who was actually in the
11 fist-fight, has never been able to determine who, if
12 anybody, he could recognize who he fought with, they
13 had friends. But what we can determine is that once
14 Mr. Timothy Phillips and Kevin Phillips was out there
15 -- apparently Kevin Phillips was all blooded -- Mr.
16 Timothy Phillips yelling and challenging anyone who
17 could have done this to his brother. What the State
18 does submit to you is that at that particular time this
19 individual who is sitting in court today was armed with
20 -- approached Mr. Timothy Phillips and fired eight
21 shots into Mr. Timothy Phillips, killing him at the
22 scene, and during the course of firing that weapon one
23 of the bullets struck a Mr. Stacy Davis, shattering his
24 ankle, while Mr. Davis was also outside the club at
25 that particular time. And the State intends to produce

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Opening Statement - DeMattia / Gordon

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1 witnesses who will testify as to the shooting.

2 From this point on, ladies and gentlemen,
3 again, all I ask you is to listen to the testimony
4 carefully of the witnesses, and it might go very fast,
5 but please pay attention and keep an open mind as to
6 what you will eventually have to decide once the case
7 is over and the testimony has ended. At that time I
8 will be able to address you again in my closing
9 arguments, and I submit to you now, as I will submit to
10 you at the end of my case, that the State bears the
11 burden, welcomes the burden in this matter, and by the
12 time the case is finished and I address you again I
13 will argue to you that we have proved and we will prove
14 our case beyond a reasonable doubt that this individual
15 on that day is responsible for the death while
16 possessing a handgun, the death of Mr. Timothy Phillips
17 and the shooting of Mr. Stacy Davis. Thank you for
18 your attention.

19 THE COURT: Thank you, Mr. DeMattia. And now
20 presenting an opening statement on behalf of -- of the
21 defendant Naeem Miller will be Mr. Jonathan Gordon.
22 Mr. Gordon?

23 MR. GORDON: Thank you, Your Honor. Mr.
24 Miller, Mr. DeMattia. Good morning, ladies and
25 gentlemen. Ladies and gentlemen, I want you to picture

Opening Statement - Gordon

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1 now a very, very cold, 2:30 in the morning, scene in
2 Newark at Toby's Lounge. It's 2:30 in the morning,
3 it's cold outside and there's a bar that's happening on
4 Bergen Street. Things are happening in the bar,
5 there's a lot of people inside. There are people
6 dancing, there are people drinking. At some point
7 inside that crowded bar where people are dancing and
8 drinking, a fight breaks out. It's not very large
9 inside, there are a lot of people around. I want you
10 to try to imagine, as you listen to the evidence in
11 this case, what it's like to be in that fairly-enclosed
12 area under those circumstances.

13 You're going to hear testimony in this case
14 that at some point this person, Kevin Phillips, got
15 into a fight with somebody in the bar and somebody
16 punched him so hard that he went down on the ground
17 inside the bar. He got punched so hard that his nose
18 was all bloody and bleeding all over his face. He got
19 punched so hard that he was dazed and didn't even know
20 exactly who had hit him and was under the strain of
21 that moment of having suffered that injury. You're
22 going to find out later that all the other people in
23 the bar that were in there were then asked to leave the
24 bar -- it was close to closing time -- by various
25 security members -- bouncers, if you will -- who were

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Opening Statement - Gordon

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1 in the bar at that time. So try to picture that scene
 2 now. There's all this happening inside the bar.
 3 There's some violent act and Kevin Phillips is hurt.
 4 Now there's confusion. You're going to hear that, in
 5 fact, it was a chaotic scene in there. It was chaos.
 6 People were being pushed out the front door of the bar.
 7 You'll hear testimony that this bar door opens out onto
 8 the sidewalk on Bergen Street. You'll hear that the
 9 bouncers were pushing and moving everyone toward the
 10 door quickly.

11 Outside now it's cold, people outside in
 12 jackets, it's pretty dark out there, it's 2:30 in the
 13 morning. It's not the afternoon, it's the morning. A
 14 lot of these people that were coming out had been
 15 drinking. Now there are people outside on the
 16 sidewalk. What you're going to hear is that the
 17 brother of Kevin Phillips, Timothy Phillips, was angry
 18 and upset. He was acting belligerent. People were
 19 trying to calm him down inside the bar, and when he got
 20 outside he was trying to figure out who had punched his
 21 little brother.

22 He started to yell, he started to point, he
 23 started to swing his fists on people that were standing
 24 around right outside of the bar door. He started to
 25 yell. He was acting belligerent. Ladies and

Opening Statement - Gordon

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1 gentlemen, outside that bar it was a chaotic scene. At
 2 some point immediately after Tim Phillips started to
 3 swing shots were fired, gun shots. I submit to you
 4 when you come into the courtroom with your common sense
 5 you're going to know when you hear the evidence that
 6 when those gun shots started people started to duck and
 7 go down on the ground. People tried to get away, but
 8 that in fact what you'll hear is that it happened very,
 9 very fast. And when those shots were done two people
 10 were down on the ground.

11 Ladies and gentlemen, on that date, December
 12 16th of 2001, Naeem Miller did not possess a gun. He
 13 had no gun in his possession. You'll hear no evidence
 14 that Naeem Miller knew Timothy Phillips. No one is
 15 going to tell you that Tim Phillips knew Naeem Miller.
 16 Now one is going to tell you anything about any
 17 argument, or beef that Naeem Miller had with Tim
 18 Phillips. On that date Naeem Miller had no reason
 19 whatsoever to shoot Timothy Phillips. In fact, he did
 20 not shoot him. He didn't point a gun at him. He
 21 didn't shoot Stacy Davis either. He didn't have a gun
 22 in his hand. You're not going to hear any credible
 23 evidence that will convince you that under those
 24 circumstances, in that enclosed area, and then
 25 immediately spilling onto the street, under those

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Opening Statement - Gordon

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1 circumstances of some violence already occurring, the
 2 drinking that was going on, all of the chaos that
 3 you're going to hear about, you're not going to hear
 4 credible evidence that's going to convince you that the
 5 State can prove to you that Naeem Miller was there or
 6 possessed a gun.

7 Ladies and gentlemen, when we chose you as
 8 jurors we asked of you a few things that are very
 9 important. We asked you to bring your common sense in
 10 here and to leave any prejudice that you have outside,
 11 any preconceived notions, any partiality. We ask you
 12 to be fair and impartial. All Naeem Miller asks of you
 13 now is that you go along with what you promised us. Be
 14 fair, be impartial, listen to the evidence as it comes
 15 in. As Judge Vena just told you this morning,
 16 reasonable doubt in a case can come from evidence or a
 17 lack of evidence. At the conclusion of this case I
 18 will come to you and argue to you in my closing
 19 argument. That will be my last opportunity to speak to
 20 you on behalf of Naeem, to defend him against the
 21 accusations in this case, and when I do, ladies and
 22 gentlemen, I'm going to ask you at that time to honor
 23 our principle of law, not guilty, not guilty until and
 24 unless the State proves each and every element of each
 25 and every charge beyond a reasonable doubt.

Opening Statement - Gordon/ Colloquy

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1 I thank you now in advance for your
 2 attention. I look forward to speaking to you again in
 3 closing argument and explaining to you then what I
 4 think the evidence and the lack of evidence means to
 5 the State's failure to prove this case to you beyond a
 6 reasonable doubt. Thank you again, ladies and
 7 gentlemen.

8 THE COURT: Thank you, Mr. Gordon. We're now
 9 going to take our mid-morning break, and when we resume
 10 we'll begin with the testimony of the first witness on
 11 behalf of the State. Please limit yourself to the 15
 12 minutes. We'll do our best to get you back in here and
 13 get started at the end of the 15 minutes. Remember,
 14 don't discuss the case even among yourselves. The time
 15 to do that is not for a while yet. Enjoy your break.
 16 We'll see you back here in 15 minutes.

(Recess)

18 THE COURT: All right. We're ready to
 19 continue. The first witness on behalf of the State,
 20 Mr. DeMattia?

21 MR. DeMATTIA: Newark Police Officer G.
 22 Ramos.

23 THE COURT: Officer Ramos to the stand,
 24 please.

25 COURT OFFICER: Please raise your right hand.

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SHEET 38

Ramos - Direct 74

1 G E O R G E R A M O S, STATE'S WITNESS, SWORN
2 COURT OFFICER: State your name of the
3 court's record?
4 THE WITNESS: Sergeant George Ramos, 6961,
5 Newark P.D.
6 THE COURT: Good morning, Sergeant, please be
7 seated.
8 THE WITNESS: Good morning.
9 THE COURT: Mr. DeMattia?
10 MR. DeMATTIA: Thank you, Judge.
11 DIRECT EXAMINATION BY MR. DeMATTIA:
12 Q Sir, can you please keep your voice up loud
13 enough so that the people at the edge of the jury can
14 also hear what you have to say.
15 A Yes.
16 Q Sir, by whom are you employed?
17 A I'm employed by the Newark Police Department.
18 Q In what capacity?
19 A A sergeant.
20 Q How long have you been a police officer?
21 A I've been a police officer for approximately 14
22 years and sergeant for three years.
23 Q Back in December of 2001 what was your rank?
24 A I was a police officer.
25 Q A regular patrolman?

Ramos - Direct 75

1 A Patrol.
2 Q Now, Sergeant Ramos, I'd like to bring your
3 attention back to December 16th of 2001. Were you on
4 duty in the capacity of a regular patrolman on that
5 date into evening?
6 A Yes, sir.
7 Q Did you have occasion to respond to 966
8 Bergen Street, City of Newark?
9 A Yes, sir.
10 Q Who were you with that evening?
11 A I was working with Officer Vivian Poole.
12 Q And how were you dressed?
13 A Full patrol uniform.
14 Q and what were you driving?
15 A Marked patrol unit.
16 Q And what is located at 966 Bergen Street in
17 the City of Newark?
18 A That's, from my recollection, Toby's Lounge. It's
19 a bar.
20 Q Bar, tavern?
21 A Tavern.
22 Q And the reason why you were -- Well, strike
23 that. Were you summoned to respond to that location at
24 approximately 2:35 a.m. on December 16th of 2001?
25 A Yes, sir.

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Ramos - Direct

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1 Q For what reason?

2 A Shots fired at the location.

3 Q Did you have occasion to actually respond to
4 that location?

5 A Yes, sir.

6 Q When you responded to that location do you
7 recall what you observed?

8 A When we arrived we saw quite a bit of a crowd
9 outside. There was two individuals that were victims
10 from gunshot sounds. One was laying on his back and
11 the other one was, I believe, sitting by the curb also
12 shot.

13 Q What was the condition of the one who was
14 lying on his back?

15 A The one that was lying on his back to me it looked
16 very serious and critical, a lot of bleeding from the
17 victim. He wasn't responding, from my recollection.

18 Q Did you attempt to talk to him?

19 A No.

20 Q He wasn't responding. What do you mean by
21 that?

22 A From my recollection he wasn't at that point.

23 Q Did you at any time ascertain his name, the
24 one that was lying on his back not responding?

25 A I personally didn't. My partner got most of the

Ramos - Direct

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1 information. She was writing for that particular tour.

2 Q What did she write?

3 A From my recollection I think it was Mr. Phillips,
4 Timothy Phillips, as being one of the victims.

5 Q Well, when you say your partner wrote
6 something, to memorialize the events of herself and
7 your activity that evening?

8 A Yes, that was the incident report.

9 Q Would you like to refresh your memory by
10 having a copy in front of you?

11 A Yes, I would like that.

12 MR. DeMATTIA: Your Honor, it's been
13 previously marked S-1 for identification, a two-page
14 incident or 802 report authored by V. Poole.

15 BY MR. DeMATTIA:

16 Q Sir, take a look at that exhibit and tell me
17 if you recognize it?

18 A Yes, sir.

19 Q And what is it?

20 A It's a Newark Police Incident Report.

21 Q For what incident?

22 A For the incident that we're talking about on 12-
23 16-01 at 966 Bergen Street.

24 Q All right. Does that help you recall the
25 actual name of the person who was lying on his back?

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Ramos - Direct

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1 A Yes, sir.
2 Q And who was that?
3 A Timothy Phillips.
4 Q Okay. There was another individual that you
5 indicated seemed to be shot?
6 A Yes, sir.
7 Q Were you able to ascertain his identity?
8 A Yes. It was Stacy Davis, according to the report.
9
10 Q Was he conscious and awake?
11 A Yes, sir, he was.
12 Q Did you talk to him?
13 A No, I don't recall speaking to him.
14 Q Okay. Did there come a time when other
15 people responded to the scene in terms of law
16 enforcement?
17 A Yes, sir.
18 Q What was your job there that particular
19 evening?
20 A Well, we basically were the primary unit assigned
21 to the incident. There were other units by the time we
22 got there just approaching the scene, and our primary
23 concern was to secure the crime scene and secure any
24 witnesses that there might have been, and obviously
25 render first aid to the victims, and also to render

Ramos - Direct

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1 them transport to the hospital as quickly as possible.
2 Q Well, do you know if any emergency personnel
3 --
4 A Yes, there was emergency personnel there.
5 Q They did respond?
6 A Yes.
7 Q Okay. Do you know what happened to the
8 person who was lying on his back identified as Timothy
9 Phillips and the other victim Stacy Davis?
10 A Well, he was treated by EMS at the scene and so
11 was the second victim.
12 Q Were they taken anywhere?
13 A Yes, they were taken to the emergency room at
14 College Hospital.
15 Q And did you secure the name of any witnesses
16 at that particular time?
17 A From my -- from my recollection I cannot recall if
18 I gathered the witnesses' names, but there were some
19 witnesses at the scene that were indicated on the 802
20 -- incident report.
21 Q And whose job was it to talk to them and take
22 statements from?
23 A Well, primarily my partner got most of the names
24 because she was writing on that particular day, and the
25 responding detectives from Robbery/Homicide, the

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SHEET 41

Ramos - Direct / Phillips - Direct 80
1 Prosecutor's Office later on, gathered more information
2 from the scene.
3 MR. DeMATTIA: I have no further questions.
4 THE COURT: Cross-examine?
5 MR. GORDON: Thank you, Your Honor. I have
6 no questions of this witness.
7 THE COURT: Thank you, Officer. You're
8 excused.
9 THE WITNESS: Thank you, Your Honor.
10 THE COURT: Mr. DeMattia, are you ready to
11 call your next witness?
12 MR. DeMATTIA: Kevin Phillips, Your Honor.
13 THE COURT: Kevin Phillips to the stand,
14 please.
15 COURT OFFICER: Raise your right hand, sir.
16 K E V I N P H I L L I P S, STATE'S WITNESS, SWORN
17 COURT OFFICER: State your name for the
18 court's record.
19 THE WITNESS: Kevin Rubin Phillips.
20 THE COURT: Good morning, sir. Please be
21 seated. Mr. DeMattia?
22 MR. DeMATTIA: Thank you, Judge.
23 DIRECT EXAMINATION BY MR. DeMATTIA:
24 Q Mr. Phillips, if you can, I'd like you to
25 keep your voice up loud enough so that everyone on the

Phillips - Direct 81
1 jury can be able to hear what you have to say.
2 A All right.
3 Q Sir, how old are you?
4 A 31.
5 Q And do you know a person by the name of
6 Timothy Phillips?
7 A Yes.
8 Q Who was Timothy Phillips?
9 A He's my brother by birth.
10 Q I want to bring your attention back to
11 December 16th of 2001, sir. Do you recall in the early
12 morning hours of that particular date where you were
13 located?
14 A Yes.
15 Q And where was that?
16 A It was at a tavern called Roland's on Bergen.
17 Q And does that have a different name now, or
18 known by any other name?
19 A Yes, but I can't -- don't know the new name.
20 Q But your recollection is Roland's.
21 A Yes.
22 Q All right. Is that at 966 Bergen Street?
23 A Yes.
24 Q Have you ever been there before that date on
25 December 16th, 2001?

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Phillips - Direct

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1 A Yes.

2 Q Familiar with the area?

3 A Very well.

4 Q Who were you accompanied by on that
5 particular day?

6 A My brother Timothy Phillips and a couple of
7 friends.

8 Q And what was your purpose of going there,
9 sir?

10 A It was a social bar. We go have some drinks,
11 dance with some women, enjoy ourselves.

12 Q Was that pretty much happening toward the --
13 up and until the closing hours?

14 A Yes.

15 Q Did something occur toward the closing hours
16 of the bar?

17 A Yes.

18 Q Describe what was happening or what happened.

19 A I was dancing with a female. I was approached by
20 a gentleman -- I don't know who he is -- I was looking
21 eye-to-eye to him so he definitely was my size, my
22 height. And he asked me to stop dancing with the
23 female. I told him, you know, the female was grown and
24 she didn't have a problem with it, you know, then he
25 shouldn't have a problem with it. And he went on to

Phillips - Direct

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1 tell me that, you know, he don't care what she say, I
2 need to stop dancing with her. And I told him I don't
3 -- I don't see the reason why, you know? I wasn't
4 disrespecting her and didn't think he had no
5 involvement in what we were doing.

6 Q What was your condition at that time, sir?

7 A As far as?

8 Q Were you drunk?

9 A No.

10 Q How were you responding to his request, in
11 what manner?

12 A I was telling him in the plainest form that there
13 was no reason why I should stop dancing with her. The
14 female was standing right there, had nothing to say.
15 She didn't tell me stop dancing with me while we were
16 talking. She was still dancing.

17 Q To this date do you know who that person was,
18 that male person was?

19 A No.

20 Q Can you describe him, to the best of your
21 ability?

22 A Well, like I said, I was looking at him eye-to-eye
23 so I know he had to be my height -- I'm 6-3 -- and --

24 Q As far as his build, sir, do you recall?

25 A He was a wide, heavy guy.

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SHEET 43

Phillips - Direct 84

1 Q Okay, sir. Forgive me for asking, but how
2 much do you weigh?
3 A 360.
4 Q Was he in your vicinity?
5 A Yes.
6 Q And well then what went on to happen?
7 A He was approached by I guess his friends that knew
8 me and they went on to tell him, you know -- they call
9 me "Chubb" on the street -- they said, well, that's
10 Chubb, you know, ain't no big deal, it's cool, you
11 know. It's nothing. Let it go.
12 Q Did something occur after that?
13 A He went on to push him out of the way and he
14 punched me.
15 Q Where did he punch you?
16 A In my chin.
17 Q What happened after that?
18 A He locked onto my shirt, I locked onto his shirt
19 and we began to punch each other several times in the
20 face, both with our right hands.
21 Q What happened after you were punching each
22 other several times?
23 A I slipped on the liquor, or whatever, that was on
24 the floor, he reached over, he punched me again. I got
25 up. Somebody pulled him away, who I don't know, maybe

Phillips - Direct 85

1 his friends or whatever.
2 Q What was your condition at that time when you
3 got up?
4 A I was bleeding from the nose, bleeding from the
5 mouth, you know.
6 Q How much blood?
7 A I don't know. I had on a white t-shirt.
8 Basically it was pretty soaked in the front.
9 Q Well, this was in what location of the
10 tavern?
11 A When you walk in the bar it's basically by the
12 door, the dance floor is to the right, we was to the
13 right basically by the back.
14 Q Now that that had happened and it seemed that
15 you had gotten up was there anymore fighting between
16 you and this gentleman?
17 A No.
18 Q What happened at that point?
19 A I went to look for my associates and my brother
20 that I went to the bar with. I found my brother. He
21 asked me what happened. I told him some guy didn't
22 like me dancing with his niece or whatever and we got
23 into it. We began to fight.
24 Q What was your brother's reaction?
25 A He was like who was it? I said I don't know. He

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Phillips - Direct

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1 said come outside.

2 Q Could you describe what your brother looks
3 like, his physical build, height?

4 A My brother was about 185, about 6 even -- 5-11, 6
5 feet tall.

6 Q Okay. After you told him that and it being
7 closing time, what occurred?

8 A We went outside and he said do you see him? I
9 said no. So he began to talk like, you know what I'm
10 saying, not to me but at me, you know what I'm saying,
11 without looking at me, like you know what I'm saying,
12 you don't know who it was?

13 Q Describe his condition, his demeanor, your
14 brother?

15 A He had took his shirt off, you know, and he had on
16 a tank top and it was tucked inside his boxers, you
17 know what I'm saying? He was somewhat of a pretty boy,
18 so he kept hisself real neat. So he took his shirt off
19 and he just was asking, you know what I'm saying, you
20 all know who was my brother fighting? Who was my
21 brother fighting? Why don't you try to fight me? You
22 know what I'm saying. Why you got to pick on my little
23 brother when I ain't around?

24 Q Okay. And as you're walking out of this
25 establishment and you come to, for lack of a better

Phillips - Direct

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1 term, a front door, when you open it what -- what does
2 it lead you to?

3 A The street.

4 Q The street, or is there some --

5 A The sidewalk.

6 Q All right. There is a sidewalk.

7 A Yes.

8 Q Okay. Right onto the sidewalk? Any stoops
9 or --

10 A No.

11 Q Okay. And at the time that you say your
12 brother was saying what he was saying to no one in
13 particular where was this occurring?

14 A He was directly in front of the door but like
15 closer to the curb, you know what I'm saying, than he
16 was to the door, but he was in front of the doorway.

17 Q Did there come a time when he moved from that
18 location?

19 A No, basically he was just standing right there.
20 Then he proceeded to walk into the -- he stepped down.
21 He was actually in the street in front of the car.
22 There was a car parked normally right in front of the
23 bar and he was standing in front of that car.

24 Q Did he continue to say anything at that time?

25 A Yes, he was asking, you know what I'm saying, who

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Phillips - Direct

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1 was fighting my little brother?

2 Q Was he saying it -- forgive me for asking it
3 this way -- was he saying it in that calm way you just
4 said it?

5 A No, no, he was upset.

6 Q What was his demeanor?

7 A His demeanor was he wanted to know why if we've
8 been coming here for so long why did whoever feel like
9 they had to come at me the way that they did. We know
10 basically everybody down there. We're considered
11 somewhat of regulars -- everybody know everybody -- so
12 he was upset.

13 Q Where were you at the time?

14 A At the time the car that he was standing in front
15 of I was behind the car that was behind that one in the
16 mirror bending down trying to get my breathing
17 together. I'm a really heavyset guy, blood coming from
18 my nose, you know what I'm saying? It wasn't allowing
19 me to breathe regularly.

20 Q How did you feel at that time?

21 A Exhausted, tired.

22 Q What was your condition in terms of visual?

23 A It was blurry due to the fact from the punching.
24 Like I say, he was -- he was a big guy himself, so I --
25 basically I took the weight of that -- I took the loss

Phillips - Direct

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1 of that fight.

2 Q While you were near the car what happened?

3 A Basically I bent down, I was fixing -- trying to
4 get myself together and I heard the shots coming from
5 across the street, so I stayed where I was, you know,
6 to avoid getting hit.

7 Q Where was your brother at the time?

8 A He was standing in front of that car in the
9 street.

10 Q Where you had left him?

11 A Yes.

12 Q When you heard the shots did you observe
13 anything?

14 A All I observed was a gentleman from the waist
15 down, small build, slim -- slim silhouette, you know,
16 the jeans or whatever, from the waist down, and he slid
17 on top of my brother and shot some more times.

18 Q Did you ever get a look at that individual's
19 face?

20 A No.

21 Q Can you tell me today who that individual was
22 if you saw him again?

23 A No.

24 Q After the shots stopped what did you do?

25 A I made sure that it was safe, I went over and

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Phillips - Direct 90

1 grabbed my brother and began to try to talk him out of
2 not leaving me?
3 Q What was his condition when you approached
4 your brother?
5 A He was unconscious.
6 Q Therefore did he say anything to you?
7 A No.
8 Q What did you do from that point on?
9 A One of my other associates came out and I told him
10 I've got to go get my mother. A female with her
11 girlfriends took me to my house. I went in and got my
12 mother and my little brother and proceeded back to
13 Bergen.
14 Q Was your brother there when you got back?
15 A No, they had already taken him to the hospital.
16 Q Did you go to the hospital?
17 A Yes.
18 Q Which one was that?
19 A University.
20 Q When you got to University Hospital what did
21 you discover?
22 A Basically they wasn't telling us nothing
23 immediately. Shortly after they told us that our
24 brother -- my brother had died in route to the
25 hospital.

Phillips - Direct 91

1 Q Okay. Sir, that evening was your brother
2 armed with any type of weapon?
3 A No.
4 Q At all?
5 A No.
6 Q That evening, sir, did you -- Well, how many
7 shots did you hear?
8 A Anywhere between five and seven, somewhere around
9 there.
10 Q Did you see a weapon?
11 A I seen a weapon. When he was shooting down it was
12 below his waist so I seen his waist, I seen the gun, I
13 seen his hand and the fire coming out the gun.
14 Q Did you see any other guns in that area on
15 any other persons that evening?
16 A No.
17 Q Did you see where this person when the shots
18 stopped took off to?
19 A No.
20 Q Did you see if anybody else was injured while
21 you were still at the scene?
22 A No, I didn't -- I didn't realize that until after
23 I was holding my brother I heard an associate of mine
24 screaming saying he was hit.
25 Q Did you know that person?

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SHEET 47

Phillips - Direct

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1 A Yes.
2 Q Who was that person's name?
3 A Stacy.
4 Q Prior to arriving at the tavern at 966 Bergen
5 Street that evening were you at any other location?
6 A Yes, we had stopped off at a local tavern on
7 Chancellor, and I forgot the cross block, just to pick
8 up some other friends because we were coming from my
9 deceased brother's son's birthday party, and the rest
10 of our friends was going to meet us at that bar just to
11 help us finish celebrating.
12 Q That same evening was it your nephew's
13 birthday?
14 A Yes.
15 Q And when you went to this other tavern who
16 was with you?
17 A My brother Timothy Phillips and a few associates.
18 Q Did anything happen at that tavern or on the
19 way there?
20 A No.
21 Q From there to another location?
22 A No.
23 Q Any fights with anyone?
24 A No, very joyous occasion.
25 Q Did you know if anyone was following you?

Phillips - Direct

93

1 A No.
2 Q From one location?
3 A No.
4 Q All right. Sir, you do have prior
5 involvement with the criminal justice system here in
6 New Jersey?
7 A Yes.
8 Q Back in December, if I might show you this,
9 sir, December 20th of 1995 you had pled guilty to
10 possession of CDS with the intent to distribute,
11 endangering a child, where you received a five-year
12 prison sentence?
13 A Yes.
14 Q And that was back in 1995?
15 A Yes.
16 Q You've done your time?
17 A Yes.
18 Q Are you still on parole and probation?
19 A No.
20 MR. DeMATTIA: No further questions, Your
21 Honor.
22 THE COURT: Cross-examine.
23 MR. GORDON: Your Honor, I have no questions
24 of this witness.
25 THE COURT: Thank you, Mr. Phillips, you're

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SHEET 48

Sidebar

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1 excused. Can I see counsel at sidebar, please?

2 (Sidebar)

3 THE COURT: Who is next?

4 MR. DeMATTIA: We're definitely going to run
5 out of witnesses today, Judge. We could have done this
6 case in one day. Felicia Wright is next. She's
7 probably, would you say, a little more important with
8 this thing that Mr. Phillips, warrant a little bit more
9 cross-examination?

10 MR. GORDON: That's not saying much.

11 MR. DeMATTIA: If you wanted to break now,
12 Your Honor, instead of --

13 THE COURT: So you anticipate that she'll
14 take more than a half an hour.

15 MR. DeMATTIA: Oh, yes.

16 THE COURT: Yes, so we might as well break
17 now and come back early, you know, and -- but now is a
18 logical time?

19 MR. GORDON: That's fine, Judge.

20 THE COURT: Okay.

21 (Sidebar concluded)

22 THE COURT: All right. As I explained to you
23 we oftentimes, depending upon the logic of where we are
24 in the proceeding, we take our breaks at different
25 times. Usually it's 12:30 to 1:30. Our next witness

Colloquy

95

1 we anticipate is going to take a little longer, and in
2 order to -- than the prior witnesses -- so in order to
3 enable you to better understand and retain information
4 it would probably be better not to break up this
5 witness's testimony by lunch, so we'll have an earlier
6 lunch and we'll commence her testimony as soon as we
7 get back and, therefore, we'll break now for lunch.
8 Remember don't discuss the case among yourselves or
9 with anybody else. If anybody attempts to contact you,
10 speaks to you, don't respond, don't tell your fellow
11 juror members. Make the officer aware of it
12 immediately. Remember everybody has been told to stay
13 out of contact with you. If you need help with
14 anything direct it to an officer or a member of the
15 staff. With that we'll see you back here in
16 approximately -- in an hour, at approximately 1:05.
17 Enjoy your lunch.

18 (Luncheon recess)

19 THE COURT: We're ready to call the next
20 witness for the State. You may do so, Mr. DeMattia.

21 MR. DeMATTIA: Felicia Wright.

22 THE COURT: Felicia Wright to the stand,
23 please.

24 COURT OFFICER: Raise your right hand.

25 F E L I C I A W R I G H T, STATE'S WITNESS, SWORN

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SHEET 49

Wright - Direct

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1 COURT OFFICER: State your name for the
2 court's record, please?

3 THE WITNESS: Felicia Wright.

4 COURT OFFICER: Okay. Have a seat.

5 THE COURT: Good afternoon, ma'am. Please be
6 seated. Mr. DeMattia?

7 MR. DeMATTIA: Thank you.

8 DIRECT EXAMINATION BY MR. DeMATTIA:

9 Q Ms. Wright, I'm going to be asking you
10 questions so I'd like you to keep your voice up loud
11 enough so that everyone at the end of the jury can hear
12 what you have to say.

13 Now, Ms. Wright, how old are you?

14 A 34.

15 Q And I want to bring your attention back to
16 December 16th of 2001 at approximately -- you know,
17 after midnight -- 1, 2, 3 o'clock in the morning. Were
18 you at any particular location at that time?

19 A Yes.

20 Q What was the location that you were at.

21 A At Roland's Bar.

22 Q Okay. I'm having a bit of a problem hearing
23 you, ma'am, so I know that they may be. What was the
24 name of the place?

25 A Roland's Bar.

Wright - Direct

97

1 Q Is that located at 966 Bergen Street --

2 A Yes.

3 Q -- City of Newark?

4 A Yes.

5 Q How familiar are you with that location?

6 A Very familiar.

7 Q And why is that?

8 A I live in the area.

9 Q How long have you lived in the area?

10 A Maybe about 10 -- maybe 10 years around that area.

11 Q And how often would you go to that location
12 at -- that Bergen Street location, Roland's Bar?

13 A Every weekend.

14 Q Do you know a lot of people who go there?

15 A Yes.

16 Q I want to take your attention to specifically
17 now December 16th, 2001 at that Roland's Bar located at
18 Bergen Street, Newark. Did there come a time -- Well,
19 first of all, what time, do you recall, if you can, get
20 there to Roland's Tavern?

21 A I'd usually get there about 11, 11:30.

22 Q And do you recall if anything happened in
23 Roland's Bar that evening?

24 A Would you say that again?

25 Q Inside the bar itself were you a witness to

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SHEET 50

Wright - Direct

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1 anything that happened inside the bar?
2 A No.
3 Q Did you know if anything occurred that
4 evening inside the bar?
5 A A fight broke out inside the bar that night,
6 but --
7 Q Were you a part of that fight, by any chance?
8 A No, no.
9 Q Do you know anyone who was involved in that
10 fight?
11 A I wasn't trying to find out who was fighting.
12 Q So did you have any type of confrontation
13 that night at Roland's Tavern?
14 A No.
15 Q Now, I want to take your attention to closing
16 time, around closing time, between 2 and 2:30 in the
17 morning. Was it, in fact, a time when that bar was
18 closing?
19 A Yes.
20 Q All right. And were you aware if the fight
21 had taken place at that time, or around that time?
22 A No.
23 Q But you know --
24 A It was --
25 Q I'm sorry.

Wright - Direct

99

1 A The fight was maybe I'll say 20 minutes to a half
2 an hour before the time I was leaving.
3 Q Well, what happened when you were leaving?
4 A When I was leaving the bar?
5 Q Yes, ma'am, when you were leaving the bar.
6 A I heard gunshots.
7 Q Okay. And where were you when you heard the
8 gunshots?
9 A I was going to leave the bar.
10 Q Were you outside already?
11 A No.
12 Q How close to the outside were you when you
13 heard the shots?
14 A By the door.
15 Q By the door. Okay. When the door was opened
16 -- When -- when you open the door to Roland's Tavern
17 and step out, what do you step out to?
18 A When I walked out the bar I looked out the bar --
19 After I heard all the gunshots I'm ready to leave the
20 bar now. I walked out the bar, I seen a young man on
21 the ground.
22 Q Did you know who that man was?
23 A At the time, no.
24 Q Did you eventually find out.
25 A Yes.

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SHEET 51

Wright - Direct 100

1 Q And who was that that was on the ground?
2 A Timothy.
3 Q Timothy Phillips?
4 A Yes.
5 Q Were you familiar with Timothy Phillips?
6 A Yes.
7 Q Do you know him?
8 A Yes.
9 Q Do you know his family?
10 A Yes.
11 Q How well do you know him or his family?
12 A I know him -- I know him maybe five years. His
13 family I don't really know.
14 Q Okay. And what was the condition of Timothy
15 Phillips or the person you saw at that time and you
16 later found out was Timothy Phillips, what was his
17 condition? What did he look like?
18 A He didn't look good at all.
19 Q Was he standing?
20 A No.
21 Q What was -- what was he doing?
22 A He was laying on the ground.
23 Q Approximately where from the front door of
24 the tavern?
25 A Off to the side of it, to my right, like if you

Wright - Direct 101

1 come out the bar, on my right side.
2 Q As soon as you come out the bar and you open
3 the door what do you step out onto, the street?
4 A Onto the sidewalk.
5 Q There's a sidewalk there.
6 A Right.
7 Q Am I right? And then the street is a short
8 distance from it?
9 A Yes.
10 Q Where was Timothy, if you recall?
11 A Laying on the ground.
12 Q And did you see anyone -- Well, what did you
13 see as Timothy was lying on the ground? Did you look
14 around and notice anything else?
15 A Yes, I seen people running.
16 Q Did you see anyone in particular running?
17 A Yes.
18 Q Who did you see, ma'am?
19 A Naeem.
20 Q I'm sorry?
21 A Naeem.
22 Q Did you say the name Naeem, ma'am?
23 A Yes.
24 Q All right. Let's talk a little bit about
25 that. You know a person by the name of Naeem.

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SHEET 52

Wright - Direct

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1 A Yes.
2 Q What's his last name?
3 A Miller.
4 Q How well do you know Naeem Miller?
5 A He's my daughter's father's cousin.
6 Q You have a daughter?
7 A Yes.
8 Q What is your daughter's name?
9 A Charisma.
10 Q And who is her father?
11 A Ish -- Ishmael.
12 Q What's his full name, ma'am?
13 A Donald Williams.
14 Q Donald Williams?
15 A Right.
16 Q And this Donald Williams, is he related
17 somehow to Naeem Miller?
18 A That's how I found out -- that's how I met
19 through his family as cousins.
20 Q As cousins?
21 A Yes.
22 Q So how long are you familiar with Naeem
23 Miller?
24 A I don't know him know him. I don't know him like
25 that, but when I was first introduced to him it must

Wright - Direct

103

1 have been years, at least 15 years now.
2 Q At least 15 years. And during the course of
3 these 15 years, Ms. Wright, how often would you have an
4 opportunity to see Naeem Miller?
5 A Well, if I was to see him it would be like around
6 the area where we live.
7 Q Where did you live at the time?
8 A On Custer Avenue and Osborne Terrace.
9 Q Where does, or did, Mr. Naeem Miller live at
10 the time?
11 A From my understanding on Goodwin Avenue.
12 Q Goodwin Avenue.
13 A Yes.
14 Q Any close street to that, 52nd Street?
15 A Excuse me?
16 Q Goodwin Avenue and what?
17 A Nye Avenue.
18 Q By Nye Avenue?
19 A Yes.
20 Q Your location used to be Custer Avenue, you
21 said, and Mr. Miller was Goodwin near Nye Avenue. How
22 far is that from each other?
23 A Maybe two blocks across and two blocks up.
24 Q Okay. And how far is it to Roland's Tavern
25 from your location?

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SHEET 53

Wright - Direct 104

1 A From my house to Roland's?
2 Q Former location, right.
3 A Two blocks.
4 Q And from Nye Avenue and Goodwin Avenue.
5 A How far is it to Roland's? Maybe about a good
6 five -- five to six blocks, something like that.
7 Q Would you consider that in the neighborhood?
8 A Yes.
9 Q How about Huntington Terrace. Do you know
10 where that is?
11 A Yes.
12 Q Where is that located?
13 A That's in the area, too.
14 Q About how far from where you lived in Custer
15 Avenue?
16 A Huntington Terrace is one block up -- one block up
17 and a block across from where I was living.
18 Q And how about Goodwin by Nye, how far is
19 Huntington Terrace from there?
20 A Goodwin and Nye, Huntington Terrace, two blocks up
21 and a block across.
22 Q And --
23 A One, two, maybe three blocks up and a block
24 across.
25 Q And finally, Huntington Terrace from Roland's

Wright - Direct 105

1 location?
2 A From Huntington Terrace to Osborne Terrace is one
3 block, and it's just one long strip straight to Bergen.
4 Q Straight to Bergen where Roland's Tavern is
5 located?
6 A Yes.
7 Q So within a five-block area all these streets
8 we just mentioned are within Roland's -- Roland's
9 Tavern distance?
10 A Just about.
11 Q Okay. Now, that evening you said you came
12 out, saw the body of Timothy Phillips, one particular
13 individual you saw running. That was Naeem Miller?
14 A Yes.
15 Q Had you seen Naeem Miller before you went
16 into the tavern that evening?
17 A Earlier that day I think we all passed him in the
18 car. I usually see him all the time, though.
19 Q What do you mean by all the time, before --
20 A If I would come outside --
21 Q Excuse me. Let me just finish. Before
22 December 16th of 2001 how often did you see him? What
23 do you mean all the time?
24 A If I would come outside around the area, on
25 Osborne area and everything, I would see him, you know.

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SHEET 54

Wright - Direct

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1 Now, I don't hold conversations with him, none of that
2 because, like I said, I don't know him like that, but I
3 would see him out with the -- just hanging out on the
4 block.

5 Q And over the course of how many years has
6 this been occurring up to December 16th of 2001?

7 A Since I lived on Custer. I lived on Custer maybe
8 six straight years before I moved to another location,
9 if I would come out and go around the area, if I, you
10 know, go around on Renner Avenue or whatever, the
11 majority I would see him hanging out with the boys or
12 whatever.

13 Q You're both from the same neighborhood at
14 that time.

15 A Yes.

16 Q Now, I want to jump ahead. After December
17 16th, 2001 how often did you see Naeem Miller?

18 A Say that again?

19 Q After December 16th of 2001, the night that
20 Timothy Phillips was shot, how often did you see Naeem
21 Miller?

22 A I didn't.

23 Q You have to speak up so it's on the record.

24 A I didn't, I didn't, I didn't.

25 Q You didn't see him once?

Wright - Direct

107

1 A No, no.

2 Q Is this the -- Well, let me ask you a
3 question. Do you see Naeem Miller today?

4 A Yes.

5 Q Can you point to him and describe what he's
6 wearing.

7 A Right here in the black sweater.

8 THE COURT: Indicating the defendant.

9 BY MR. DeMATTIA:

10 Q So I want to ask you, from December 16th of
11 2001 how many times have you seen him to today?

12 A I haven't.

13 Q Is this the first time you're seeing him
14 since December 16th of 2001?

15 A Yes.

16 Q Now, you say you saw him running. Was he
17 carrying anything? You have to answer the question,
18 ma'am. Was he carrying anything?

19 A Yes.

20 Q What was he carrying?

21 A He carried a gun.

22 Q Do you know what type of gun it was, what it
23 looked like? If you can tell us, ma'am, the type of
24 gun that it looked like, if you can recall?

25 A It was just a black gun.

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SHEET 55

Wright - Direct 108

1 Q Do you know weapons, ma'am?

2 A Yes.

3 Q Do you know what type of gun it looked like?

4 Do you know the difference between an automatic and a

5 revolver? Well, Ms. Wright --

6 MR. DeMATTIA: I'll withdraw that question,

7 Your Honor.

8 THE COURT: Take your time.

9 BY MR. DeMATTIA:

10 Q Ms. Wright, let me ask you some other

11 questions, Ms. Wright. Do you actually want to be here

12 today?

13 A No.

14 Q Okay. Why don't you want to be here today?

15 A Right now I'm uncomfortable.

16 THE COURT: Water, anything?

17 THE CLERK: Do you want water?

18 THE COURT: Tissue?

19 MR. DeMATTIA: I would appreciate it, Your

20 Honor.

21 THE CLERK: I'll get some.

22 MR. DeMATTIA: Ms. Wright, take a moment and

23 tell me --

24 THE COURT: Take your time.

25 MR. DeMATTIA: -- when you're ready because I

Wright - Direct 109

1 -- I do have to ask you more questions. May we get

2 some water and some tissues?

3 BY MR. DeMATTIA:

4 Q Okay. Ms. Wright, can I ask you some more

5 questions now, please?

6 A Yes.

7 Q Okay. Ms. Wright, you said you feel -- you

8 feel uncomfortable. If you can briefly explain to us

9 why you feel uncomfortable?

10 A I feel like I'm like in the middle.

11 Q Well, do you --

12 A I know his family, I know his family. I don't --

13 I just don't want to be here.

14 Q But you did receive a subpoena to come today,

15 right, ma'am?

16 A Yes. They came and got me this morning.

17 Q So your discomfort is from the fact that you

18 know both families involved, the victim's family and

19 the defendant's family?

20 A Yes.

21 Q Is that making you uncomfortable?

22 A Yes.

23 Q We've put you in an uncomfortable situation,

24 correct?

25 A Yes.

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SHEET 56

Wright - Direct

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1 Q Does that affect the testimony that you must
2 give today, Ms. Wright? Ma'am, I ask you does it
3 affect the truthfulness of the testimony that you must
4 give today?

5 A No, no.

6 Q Are you going to give us the truthful
7 testimony?

8 A Yes.

9 Q What type of gun, if you can tell us, was
10 Naeem Miller running away from the scene of Timothy
11 Phillips' killing that evening?

12 A An automatic.

13 Q An automatic?

14 A Yes.

15 Q Do you recall the color of the gun?

16 A It was black.

17 Q Okay. Ms. Wright, was there anyone else
18 outside at that time after you heard the shots and
19 emerged onto the street that had a gun in their hand,
20 that you observed?

21 A No.

22 Q Did you actually see Mr. Miller shooting at
23 Timothy Phillips?

24 A No, no.

25 Q But on your way out that door to Roland's

Wright - Direct

111

1 Tavern when is the time that you heard these shots?

2 A What do you mean?

3 Q Take me as you're opening the door to
4 Roland's Tavern, what do you hear, to come out?

5 A I hadn't went out the door yet.

6 Q Okay. As you're about to open the door what
7 do you hear?

8 A I heard gunshots.

9 Q How many?

10 A From my knowledge I heard at least six, seven.
11 I'm not sure.

12 Q Okay. Now, as you open the door to Roland's
13 and you merge onto the sidewalk do you hear anything?
14 Had the shooting stopped?

15 A Yes.

16 Q Okay. When you look up where is Naeem Miller
17 running, in what location?

18 A Like towards Scheerer Avenue.

19 Q Is he -- Where is he located, though, in
20 terms of sidewalk, street?

21 A He was in the street at the time.

22 Q Okay. And as he's running away which
23 direction is he running to?

24 A What do you mean?

25 Q Which direction is he running to, what street

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SHEET 57

Wright - Direct

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1 corner?
2 A Towards Scheerer.
3 Q Towards Scheerer?
4 A Yes.
5 Q When he got to the street corner of Scheerer
6 and Bergen what did he do?
7 A What do you mean what did he do?
8 Q When he got to that intersection of Scheerer
9 and Bergen Street -- By the way, how far is that where
10 Scheerer and Bergen Street intersect? How far is the
11 bar from that intersection?
12 A Maybe two, three houses from the corner.
13 Q Okay. When he got to the intersection again
14 of Scheerer and Bergen Street what did he do? Did he
15 stop, continue --
16 A Turned the corner. No, he had turned the corner.
17 Q Turned the corner which way, to the right or
18 to the left?
19 A To the right.
20 Q And where did he go, on what street?
21 A I don't know.
22 Q On what street was that then?
23 A Scheerer.
24 Q Did you know where he went from that point?
25 A No.

Wright - Direct

113

1 Q Did you ever see him again until today?
2 A No.
3 Q By the time you saw him, ma'am, about how far
4 was he from the body of Timothy Phillips, if you can
5 estimate the distance?
6 A He was away from him. He wasn't by him.
7 Q If Timothy Phillips is where you're sitting.
8 A Naeem was maybe past maybe by the doorway maybe.
9 Q By that doorway?
10 A Maybe.
11 THE COURT: Forty-six feet.
12 BY MR. DeMATTIA:
13 Q What were the lighting conditions surrounding
14 Roland's Tavern that evening?
15 A You mean like street lights?
16 Q Yes.
17 A It's -- it's bright out there. It's pretty
18 bright.
19 Q Are there street lamps right in that
20 vicinity?
21 A Yes.
22 Q Did you have any problem recognizing Naeem
23 Miller that evening?
24 A No.
25 Q Across the street from -- from Roland's

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SHEET 58

Wright - Direct 114

1 Tavern do you happen to know what's located across the
2 street from the tavern on the other side of the street?
3 A It's a Chinese store.
4 Q Chinese store? Do you know the name of it?
5 A Fong's.
6 Q Fong's? Was it open?
7 A Yes.
8 Q What else is located over there?
9 A It's an insurance place and a little church.
10 Q I imagine they were closed.
11 A Yes.
12 Q Did you see if Mr. Miller, what direction he
13 came from?
14 A No. I don't know.
15 Q Do you have any knowledge if he was in Fong's
16 Chinese store?
17 A I don't know. I don't know.
18 Q Was anyone else coming from any location,
19 across the street, with a gun in their hand? Did you
20 see anyone else with a gun in their hand?
21 A No, I didn't see him come from across no street
22 with no gun in his hand.
23 Q You just saw him running from the scene with
24 a gun in his hand.
25 A Leaving from the -- yes.

Wright - Direct 115

1 Q Do you know a person by the name of a Anjuana
2 Williams?
3 A Yes.
4 Q How well do you know Anjuana Williams?
5 A Somewhat well.
6 Q How long have you known her for?
7 A Anjuana maybe -- I met her through my niece. I
8 haven't known her -- Maybe met her a couple of years
9 ago.
10 Q Back in December of 2001 did you know her?
11 A Yes.
12 Q Who she was?
13 A Uh-huh.
14 Q Do you have any problem with recognizing who
15 she is?
16 A No.
17 Q If you saw this Anjuana Williams you'd be
18 easily -- she'd be easily recognizable to you?
19 A Yes.
20 Q Okay. That evening, going back to December
21 16th, 2001 inside Roland's Lounge, did you see Anjuana
22 Williams at all? Do you recall seeing Anjuana Williams
23 that night?
24 A No.
25 Q If you had seen her that night would you have

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SHEET 59

Wright - Direct

116

1 recognized her?
2 A Yes.
3 Q When you went into the tavern did you stay in
4 any particular location?
5 A What, inside the bar?
6 Q For all night?
7 A No.
8 Q What did you do?
9 A What do you mean?
10 Q Well, did you walk around at all, ma'am?
11 A Oh, yes.
12 Q Please keep your voice up. They need to hear
13 you.
14 A Yes, yes, yes.
15 Q Did you walk around at all?
16 A Yes.
17 Q Around what time did you get there?
18 A Between like 11, 11:30 I go there.
19 Q About how many times did you walk around the
20 bar, talk to people?
21 A All right.
22 Q Did you see her there?
23 A Anjuana?
24 Q Yes.
25 A No.

Wright - Direct

117

1 Q Okay. At the time of the shooting when you
2 came outside did you see Anjuana Williams there at all?
3 A No, I didn't see her.
4 Q Okay. In Fong's restaurant across the street
5 did you see her emerging from there?
6 A I didn't see her.
7 Q You didn't see her at all that evening.
8 A No.
9 Q And you have no problem recognizing her.
10 A No.
11 Q Now, did there come a time when the police
12 had an opportunity to speak to you after December 16th,
13 2001?
14 A They came to my house.
15 Q They, do you recall who they were?
16 A A cop, Ben Powell.
17 Q Investigator Ben Powell?
18 A Yes.
19 Q He's from my office?
20 A Yes.
21 Q All right. Any other law enforcement people?
22 A There was a cop with him. I can't recall his
23 name, though.
24 Q Did they ask you information about the
25 evening of December 16th, 2001?

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SHEET 60

Wright - Direct

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1 A Yes.
2 Q Did you ever give a formal statement --
3 A No.
4 Q -- about the incident?
5 A No, I did not.
6 Q That was your choosing. Did we ask you?
7 A Yes.
8 Q Did Ben Powell ask you?
9 A Yes.
10 Q Did you agree to give a formal written
11 statement?
12 A No, I did not.
13 Q Did you agree to talk to him, however?
14 A I spoke to him about it.
15 Q All right. Did you talk about the events of
16 December 16, 2001 with Investigator Ben Powell?
17 A Yes.
18 Q All right. Do you have knowledge of anything
19 happening to Investigator Ben Powell?
20 A I heard he had passed.
21 Q And how?
22 A I don't -- I don't know.
23 Q Okay. You don't know, but he -- he died,
24 correct?
25 A Yes.

Wright - Direct

119

1 Q Okay. When you talked to Investigator Ben
2 Powell did he have an opportunity to show you a
3 photograph?
4 A Yes.
5 MR. DeMATTIA: Okay. Your Honor, it's
6 previously marked S-20 for identification.
7 BY MR. DeMATTIA:
8 Q Now, when he showed you a photograph he was
9 talking to you about what had happened on December
10 16th --
11 A Yes.
12 Q -- was he not?
13 A Yes.
14 Q Did you tell him who you saw that evening
15 with a gun?
16 A Uh-huh, I think.
17 Q I'm sorry. Please --
18 A I think -- I don't -- I'm not quite sure. I told
19 him nothing about no gun that night.
20 Q Okay. Did he show you a picture?
21 A Yes.
22 Q All right. Whose picture is that?
23 A It's Naeem.
24 Q Naeem Miller?
25 A Yes.

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SHEET 61

Wright - Direct

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1 Q Okay. The person in court today?
2 A Yes.
3 Q And did Investigator Powell have you do
4 anything with the photograph?
5 A Yes, he told me to sign it.
6 Q And what did you do to the back?
7 A Signed it.
8 Q Signed it? Keep your voice up, please.
9 A I signed it.
10 Q And what date was it?
11 A January the 9th.
12 Q Of what year?
13 A 2002.
14 Q 2002. Now, does Mr. Miller look the same as
15 in this picture?
16 A No.
17 Q What's different?
18 A His hair is cut.
19 Q Please speak loud, ma'am. They need to hear
20 you.
21 A His hair is cut.
22 Q His hair is cut?
23 A Yes.
24 Q In his picture how is his hair?
25 A Dreaded.

Wright - Direct

121

1 Q Dreaded?
2 A Yes.
3 Q Longer hair?
4 A Yes.
5 Q Okay. Does he have a beard in the picture,
6 the way he has today?
7 A No.
8 Q In your time that you seen him during the
9 course of your 15 years prior to December 16th of 2001,
10 have you ever seen him with hair like that and a beard
11 like that? Ma'am, you'll have to answer yes or no.
12 A No.
13 Q And, ma'am, although you never consented or
14 agreed to giving a formal statement, after you talked
15 to Investigator Powell, did there come a time when you
16 were subpoenaed to the Essex County Grand Jury?
17 A Yes.
18 Q Okay. And do you recall what date that was?
19 Or on that particular time when you were called before
20 the Essex County Grand Jury did you, in fact, testify,
21 before an Essex County Grand Jury?
22 A Yes.
23 Q All right. And were you asked questions
24 about the events of December 16th, 2001?
25 A Yes, yes.

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SHEET 62

Wright - Direct

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1 Q Did you want to be in front of an Essex
2 County Grand Jury at that time?
3 A No.
4 Q Who was the prosecutor that was there?
5 A You.
6 Q But you were subpoenaed and you showed up.
7 A Yes.
8 Q Did you give truthful testimony before the
9 Essex County Grand Jury?
10 A Yes.
11 Q Did that make you feel uncomfortable?
12 A Yes.
13 Q Ma'am, just a few more questions that I have.
14 With the time period after December 16th, after Mr.
15 Phillips was shot and killed on December 16th, this
16 Anjuana Williams, did you see her in the neighborhood
17 after December 16th, 2001?
18 A Yes.
19 Q Did you ever talk to her about this incident?
20 A No.
21 Q Did she ever talk to you about this incident?
22 A No.
23 Q In the months after December 16th, 2001 were
24 you ever contacted by any of the people from my office
25 or Newark Police Department if you had seen Mr. Miller?

Wright - Direct / Cross

123

1 After the shooting.
2 A Any time after?
3 Q Any time after the shooting were police in
4 the area asking you if you saw Mr. Miller?
5 A No, sir.
6 Q Asking you now, if you --
7 A I mean have I ever seen him.
8 Q Yes.
9 A Oh, yes, they asked me have I seen him. I told
10 him no.
11 Q And did you see him?
12 A No.
13 MR. DeMATTIA: Okay, Judge. I have no
14 further questions for Ms. Wright.
15 THE COURT: Cross-examine.
16 MR. GORDON: Thank you, Your Honor.
17 CROSS-EXAMINATION BY MR. GORDON:
18 Q Ms. Wright, that night, 11, 11:30, that's
19 when you got to Roland's, correct?
20 A Yes.
21 Q And so that would have been on December 15th,
22 the Saturday night, right?
23 A Yes.
24 Q And prior to going to Roland's where had you
25 been that night?

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SHEET 63

Wright - Cross

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1 A Home.
2 Q At home?
3 A Uh-huh.
4 Q Okay. Did you consume any alcohol when you
5 were at your house that night?
6 A Yes.
7 Q Do you recall approximately what time on
8 Saturday, December 15th, 2001 you began to consume
9 alcohol?
10 A About 10:30, right before it was time for me to go
11 out.
12 Q As you sit here today can you tell the
13 members of the jury if you remember what alcohol, what
14 type of alcohol, you were consuming when you were in
15 your house on Saturday night?
16 A Beer.
17 Q Do you remember approximately how many beers
18 you had when you were still in your house?
19 A Yes.
20 Q How many?
21 A A 24-ounce can.
22 Q Is that it?
23 A That's it.
24 Q Now, at some point around 11, 11:30 you left
25 to go to Roland's, right?

Wright - Cross

125

1 A Yes.
2 Q And when you got to Roland's did you consume
3 any alcohol there?
4 A One beer.
5 Q Okay. When you were there at 11 o'clock or
6 11:30 you ordered a beer at the bar?
7 A Not at 11:30, maybe like 12, 12:30.
8 Q So is it your testimony to the jury that you
9 were in the bar for a while before you actually got a
10 beer?
11 A Uh-huh.
12 Q And then did you order a beer at the bar?
13 A Yes.
14 Q And you sat there drinking the beer or
15 walking around drinking the beer?
16 A Walking, right.
17 Q And you stayed in the bar until the time of
18 the shooting, right?
19 A Yes.
20 Q And to the best of your knowledge that
21 shooting took place around 2:30 in the morning, right?
22 A It was after 2, exactly what time I don't know.
23 Q All right. And so is it your testimony now
24 that around 12 you got one beer and for two-and-a-half
25 hours you were only working on that one beer in -- in

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SHEET 64

Wright - Cross

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1 Roland's?
2 A That's it. That's all I needed.
3 Q That's all you needed.
4 A Yes.
5 Q Did you consume any other type of alcohol at
6 that time?
7 A No.
8 Q Had you consumed during those hours any type
9 of narcotics at all?
10 A No.
11 Q Now, when you were inside the bar you
12 testified that as you -- You weren't aware when you
13 were in there of any confrontation going on in the bar,
14 were you?
15 A A fight had broke out in the bar.
16 Q You had -- you knew about that right?
17 A Huh?
18 Q You knew about it. You remember it?
19 A Yes. I didn't try to find out where it was, and
20 none of that. It wasn't -- it wasn't a long fight or
21 nothing, you know?
22 Q Do you remember seeing anybody get hit?
23 A No.
24 Q Well, what was it that made you know there
25 was a fight inside the bar?

Wright - Cross

127

1 A The crowd.
2 Q What did the crowd do?
3 A You know how in a fight people gather around, you
4 know, punch out.
5 Q And do you recall -- well, do you recall
6 being asked questions by the prosecutor when you were
7 in front of the Essex County Grand Jury on May 9th of
8 2003?
9 A Yes.
10 Q And do you recall being asked by Mr. DeMattia
11 about whether or not you witnessed anything that
12 appeared to be a confrontation or a fight? Do you
13 recall being asked that question by Mr. DeMattia in
14 front of the Essex County Grand Jury?
15 A No, I don't remember him asking that.
16 Q Well, let me back up then and ask you when
17 you went to that grand jury proceeding where Mr.
18 DeMattia was asking you questions, do you remember
19 being sworn under oath like they swore you here today?
20 A Uh-huh.
21 Q And they swore you under oath to tell the
22 truth, the whole truth and nothing but the truth,
23 correct?
24 A Uh-huh.
25 THE COURT: Please try to respond to any of

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SHEET 65

Wright - Cross

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1 the questions verbally because we don't -- it's hard to
2 get the uh-huhs or things like that. Okay?

3 BY MR. GORDON:

4 Q Now, so you don't recall giving -- giving Mr.
5 DeMattia an answer to the question did you witness
6 anything that appeared to be confrontation or a fight,
7 you don't recall as you sit here today that you told
8 the Essex County Grand Jury no?

9 A I don't know. I was scared. That day I was
10 nervous. I don't -- I don't -- I was nervous. I'm
11 nervous now.

12 Q Were you under subpoena at the Essex County
13 Grand Jury to appear there?

14 A Yes.

15 Q And did somebody bring you there like
16 somebody brought you here today?

17 A Did they pick me up to bring me? I believe they
18 did pick me up.

19 Q Someone from the Prosecutor's Office came and
20 got you, true?

21 A Oh, my God. I believe they did come and get me.

22 Q By the way, you mentioned earlier that the
23 first contact you had with law enforcement after the
24 shooting was Ben Powell came to your house, is that
25 correct?

Wright - Cross

129

1 A Yes.

2 Q And he came with another law enforcement
3 officer?

4 A Uh-huh.

5 Q And did he discuss with you the fact that he
6 believed you had information for him, or was he coming
7 there because you called him?

8 A No, I didn't call him.

9 Q You never called Ben Powell to come to your
10 house, did you?

11 A No.

12 Q And when he came to your house did you know
13 Ben Powell from before that?

14 A I didn't know him know him, but I knew that he
15 worked in the Prosecutor's Office.

16 Q You did know that, didn't you?

17 A Yes.

18 Q When he came to your house. Had you ever had
19 any discussions with him or dealings with him face-to-
20 face before that time?

21 A No.

22 Q But when he came to your house you recognized
23 him. Did you let him in?

24 A I wasn't home and he came back.

25 Q Well, he came back and at some point you were

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SHEET 66

Wright - Cross

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- 1 home, right?
- 2 A I was on the porch and he came and talked to me on
- 3 the porch.
- 4 Q Right. And did he only talk to you at your
- 5 house, or did he ask you to come to the Essex County
- 6 Prosecutor's Office at some point?
- 7 A He came and got me and brought me down there.
- 8 Q Let's talk about that for a minute. You were
- 9 on the porch and he came and got you, true?
- 10 A No, he was talking to me. He didn't take me that
- 11 day.
- 12 Q So --
- 13 A He didn't take me that day.
- 14 Q Okay. So the first day he just came and
- 15 talked to you, right?
- 16 A Uh-huh.
- 17 Q Approximately how long did that talk take?
- 18 A Maybe 10, 15 minutes at most.
- 19 Q And did he ask you if you had been at
- 20 Roland's that night?
- 21 A He knew.
- 22 Q Do you know as you sit here today that Ben
- 23 Powell knew that you were at Roland's?
- 24 A No.
- 25 Q Well, you say he knew. Did he talk to you

Wright - Cross

131

- 1 like he knew?
- 2 A Well, once he came to see me and was talking to me
- 3 it came up and he asked me was I down there and I said
- 4 yes. After that he was just coming to my house.
- 5 Q You felt pressure from Ben Powell at that
- 6 point?
- 7 A No.
- 8 Q Were you uncomfortable with the fact that he
- 9 was coming to your house?
- 10 A I mean who wants a cop coming to their house?
- 11 Q So you felt some -- some discomfort with
- 12 that, right?
- 13 A (No verbal response)
- 14 Q Now, when he was there the first time did he
- 15 discuss with you that he wanted you to come to his
- 16 office, to the Essex County Prosecutor's Office, to
- 17 talk more?
- 18 A Yes.
- 19 Q And did you set a date and time at that time,
- 20 or did that come later?
- 21 A I really don't remember if we set a date at --
- 22 No, I don't recall.
- 23 Q On some date after that he came back to pick
- 24 you up and take you to the Prosecutor's Office, right?
- 25 A Yes.

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SHEET 67

Wright - Cross

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1 Q Do you recall now as you sit here was that a
2 day later or a week later? Approximately how long?

3 A I don't know. I don't know. I don't -- I don't
4 know how long after it was.

5 Q When he came to talk to you on the porch that
6 day was that the day that you put your signature on the
7 back of that picture, or was that the next time?

8 A That wasn't the day. I don't think I came down
9 here with them that day.

10 Q So as you sit here today is it -- is it your
11 best recollection that when you went the second time
12 that's when he showed you a picture of Naeem?

13 A Yes. No, that was -- that was the first time
14 coming down here, but that wasn't the first time that I
15 seen him or talked to him.

16 Q Okay. Let's try to be clear so the jury
17 understands. He came to your house and you were on the
18 porch, right?

19 A Uh-huh.

20 Q And he talked to you about the December 16th
21 events, right?

22 A Yes.

23 Q And he wanted you to come to his office, to
24 the Prosecutor's Office, at some point, right?

25 A Uh-huh. Yes.

Wright - Cross

133

1 Q That day did he show you a photograph or no?

2 A That day? No.

3 Q No?

4 A I don't -- I don't -- No, I didn't see that
5 photograph until I got -- until they, you know, brought
6 me here down to the Prosecutor's Office.

7 Q Okay. And now you don't remember how many
8 days passed, right?

9 A I don't know.

10 Q Until you came down.

11 A No.

12 Q But at some point they came and picked you
13 up, right?

14 A Yes.

15 Q And they brought you down here to their
16 office. You think they showed you the photo that day?

17 A Yes.

18 Q Now, between December 16th of 2001 and the
19 date that you came down to the Prosecutor's Office, had
20 you had any discussion with anyone about the fact that
21 you thought you had seen Naeem outside of Roland's that
22 night?

23 A Say that again?

24 Q Did you tell anybody during that time period
25 between December 16th and the time that Ben Powell

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SHEET 68

Wright - Cross 134

1 showed up on your porch -- let's talk about that period
2 -- did you tell anyone that you had seen Naeem that
3 night in front of Roland's bar?
4 A No.
5 Q By the way, do you know somebody by the name
6 of Stacy Davis?
7 A I don't know him. I don't know him.
8 Q Well, maybe I'm using the wrong word, know.
9 Are you aware of the existence of a person by the name
10 of Stacy Davis?
11 A Yes.
12 Q On December 16th of 2001 were you aware of
13 the existence of a person by the name of Stacy Davis?
14 A Yes.
15 Q Had you ever spoken to him prior to that
16 date?
17 A No.
18 Q Since that date of December 16th, 2001 have
19 you ever spoken with Stacy Davis?
20 A No.
21 Q Have you had any communication with him of
22 any kind?
23 A No.
24 Q Now, I want to bring you back again when you
25 came to the Prosecutor's Office with Ben Powell and you

Wright - Cross 135

1 were interviewed, you did not give a written statement,
2 correct?
3 A I didn't.
4 Q He showed you a photograph of Naeem and you
5 signed the back of it.
6 A He asked me --
7 Q True?
8 A Yes.
9 Q Did you have any contact with Ben Powell, or
10 anyone from the Prosecutor's Office between that date
11 and when you got your subpoena to come before the Essex
12 County Grand Jury?
13 A No.
14 Q On December 16th of 2001 you testified
15 earlier you knew, or you were aware of the existence of
16 Timothy Phillips?
17 A Pardon?
18 Q You knew Timothy Phillips was, right?
19 A Oh, yes, I know who he is.
20 Q And did you know his brother Kevin?
21 A Yes.
22 Q Would you see them at any time prior to
23 December 16th, 2001 in Roland's?
24 A Yes.
25 Q Is it fair to say that you were a regular in

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SHEET 69

Wright - Cross

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1 Roland's?
2 A Yes.
3 Q And they were regulars in Roland's?
4 A Somewhat.
5 Q Somewhat? That's fair to say. Somewhat you
6 would see them there? Now, was there a time that
7 between December 16th, 2001 and the time that you spoke
8 to Ben Powell for the first time on the porch that you
9 had any discussion with any member of Timothy's family
10 about the shooting?
11 A No.
12 Q Right up until today have you had any
13 discussion with anyone in Timothy's family about the
14 shooting?
15 A No.
16 Q Did you see anybody here today in the
17 building from Timothy's family?
18 A Yes.
19 Q And you knew them, right?
20 A Yes.
21 Q And you spoke to them outside in the hallway
22 at all?
23 A Yes.
24 Q Was that this morning?
25 A Yes.

Wright - Cross

137

1 Q Before you saw those people this morning had
2 you talked to any of them since the date of the
3 shooting?
4 A No.
5 Q Now, when you spoke to Ben Powell did he tell
6 you how he found out that you were at Roland's that
7 night?
8 MR. DeMATTIA: Well, Judge, that would have
9 to be hearsay, first of all.
10 MR. GORDON: I didn't ask what he said. I
11 asked did she -- did he tell her how he found out?
12 THE WITNESS: No.
13 MR. DeMATTIA: That would be asking for --
14 THE WITNESS: No.
15 MR. DeMATTIA: All right.
16 THE COURT: Wait a minute now. When somebody
17 objects you have to stop answering.
18 MR. DeMATTIA: A response based on hearsay,
19 that's my objection, Judge.
20 THE COURT: Well, it's certainly an out-of-
21 court statement, but I assume it's --
22 MR. GORDON: It's not offered for its truth,
23 Your Honor.
24 THE COURT: -- not offered for its truth, so
25 I'll allow it.

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SHEET 70

Wright - Cross

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1 MR. DeMATTIA: May I inquire what it's
2 offered for then, Judge?

3 THE COURT: What -- what the witness knew.
4 Objection is overruled. Please continue.

5 BY MR. GORDON:

6 Q Did Ben Powell tell you when he saw you on
7 the porch how -- don't tell us how, if he did -- but
8 did he tell you how he knew you were at Roland's bar?

9 A No.

10 Q Now, you said before that when you first
11 stepped out of the bar -- Well, I'll withdraw that,
12 Your Honor. Let me ask you this. When you stepped out
13 of that bar door that night, Ms. Wright, were there
14 other people other than Naeem and other than the people
15 that were on the ground, were there other people
16 outside on the sidewalk?

17 A There was a couple of people outside.

18 Q Well, when you say a couple of people
19 let's --

20 A Well, maybe five -- four, five people, something
21 like that, around that.

22 Q So it's your testimony now that when you got
23 out of that bar --

24 A It might have been a little more than that.

25 Q Well, let's try to get at the truth, Ms.

Wright - Cross

139

1 Wright. Try to remember --

2 MR. DeMATTIA: Objection, Judge, as to that
3 characterization, Judge, truth.

4 THE COURT: Sustained. Sustained.

5 MR. GORDON: I'll withdraw that, Your Honor.

6 BY MR. GORDON:

7 Q Give us your best estimate now for the jury,
8 when you stepped out of Roland's bar how many people,
9 other than Naeem or the people that were on the ground,
10 did you see on the sidewalk?

11 A On the sidewalk?

12 Q Yes.

13 A I would say four.

14 Q And did you see any people in the street in
15 the immediate area in front of Roland's?

16 A No.

17 Q Were there cars parked out there on Bergen
18 Street that night?

19 A It was -- it was -- that I recall there was a
20 crowd there. It was -- I believe there was a crowd
21 there.

22 Q Were you able to see across the street to the
23 area where Fong's Chinese restaurant was open?

24 A Yes.

25 Q There were some people over there, too,

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SHEET 71

Wright - Cross

140

1 right?
2 A No, not outside.
3 Q So really the only people you saw out there
4 that night when you stepped out were about four or
5 five, give or take, people.
6 A Yes.
7 Q All right. You said you heard shots. Did
8 anybody -- Could you see anyone else running at the
9 time the shots were fired?
10 A Yes. Yes.
11 Q Okay. At the time the shots were fired you
12 were still inside the bar, right?
13 A Yes.
14 Q And so where was it that you saw people
15 running?
16 A Outside the bar.
17 Q So it's your testimony now that you were
18 coming out of the door looking through the door?
19 A I was on my way out the door. Okay? When I was
20 standing by the door you could hear the gunshots. The
21 last shot that I heard then I'm coming out. I'm ready
22 to get out the bar now, I'm ready to go home.
23 Q So you just said that some people were
24 running, right?
25 A Yes, outside the bar.

Wright - Cross

141

1 Q Okay. How many people did you see running?
2 A I mean, people was running different directions.
3 I would say like --
4 Q I'm sorry.
5 A -- three -- two or three different people.
6 Q Okay. Are those two or three people part of
7 the four people you told the jury about a minute ago or
8 those are different?
9 A No, no.
10 Q So two or three people were running and there
11 were another few people, maybe four five, not running
12 but standing in the sidewalk area?
13 A Yes.
14 Q Now, so is it safe to say then that it was a
15 simultaneous event, the gunshots, then you saw people
16 running? It was like right away?
17 A I can't -- Say that again, sir?
18 Q You heard the gunshots and then, since you
19 were just coming out of the bar, you saw people
20 starting to run.
21 A Yes. I wasn't the only one who came out of the
22 bar. The people who was, you know what I'm saying,
23 running, too, I'm not sure if they was already outside,
24 did they come out the bar behind me? A couple of
25 people came out the bar.

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SHEET 72

Wright - Cross

142

1 Q Okay. Well, let's try to be clear about
2 this. You were stepping out the door. There were some
3 people behind you, right?

4 A Of course, yes.

5 Q And there were some people directly in front
6 of you who were just leaving, also, right?

7 A Yes, maybe one or two, if that.

8 Q Okay. So those one or two people were in
9 front of you, there were some people on the sidewalk,
10 and some people were also running, right?

11 A No, see, I'm telling you the people that I seen
12 running the opposite way, I don't know if them the same
13 people came out the bar with me, you know what I'm
14 saying?

15 Q When you say the opposite way which direction
16 are you talking about?

17 A We're not talking of Scheerer now.

18 Q Well, when you step out of that bar to the
19 left is Scheerer and to the right is Renner, right?

20 A To the left is Scheerer, to the right is Renner.

21 Q Both those streets intersect and cross
22 Bergen, right?

23 A Uh-huh.

24 Q So some people were running in the direction
25 of Bergen, right?

Wright - Cross

143

1 A Yes.

2 Q Now, you indicated that the lighting out
3 there was pretty good. There was some lighting in
4 front of Roland's that night. You said you saw Naeem
5 running -- When you first laid eyes on him did you say
6 he was approximately as far back as that door?

7 A About as far as the door.

8 Q Okay. So -- so we're clear -- By the way,
9 do you wear glasses?

10 A No, I don't.

11 Q You don't need glasses for vision at night,
12 do you?

13 A No, I don't.

14 Q So when you saw Naeem were you just near the
15 door of the bar?

16 A I was outside the door.

17 Q How many steps out of the door?

18 A Like maybe three, four steps out the door.

19 Q And then you looked and saw Naeem. So in
20 relationship to Fong's, is Fong's directly across the
21 street from the bar?

22 A Uh-huh. Uh-huh. Yes, it is.

23 Q Okay. So you're on the sidewalk on the other
24 side of Bergen. Bergen is two lanes in both
25 directions, right?

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SHEET 73

Wright - Cross

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1 A Uh-huh. Yes.
2 Q And you first laid eyes on Naeem when he was
3 approximately this far from you, right?
4 A Yes.
5 Q And he was running.
6 A Yes.
7 Q Was he running towards you?
8 A No.
9 Q Was he running towards Renner, to your right?
10 A No.
11 Q Was he running towards Scheerer to your left?
12 A Yes.
13 Q And so was he turned this way to be running,
14 or was he turned toward Fong's or towards you?
15 A He was -- you would see the side and the back of
16 him.
17 Q Excuse me?
18 A You would see the back and the side -- You know,
19 I could see the side of his face.
20 Q So, where you are now is a couple -- two or
21 three steps outside the door of Roland's, Renner is
22 this way, Scheerer is this way, right?
23 A Yes.
24 Q You see a person that you think is Naeem and
25 he's turned somewhat sideways to you.

Wright - Cross

145

1 A Yes.
2 Q Profile.
3 A Uh-huh.
4 Q Okay? Right?
5 A Yes. Yes.
6 Q And he's running, right?
7 A Yes.
8 Q And right here when you see him running
9 that's the front of Fong's Chinese restaurant, all the
10 way over here, right? Or no?
11 A Say -- say that again?
12 Q Well, you just said Fong's is directly across
13 from --
14 A Right in front of you.
15 Q -- where you're coming out, right?
16 A Yes.
17 Q Okay. And Fong's has a front door that faces
18 on Bergen, right?
19 A Yes.
20 Q And so when you first saw that person
21 running, were they -- if you were looking at them but
22 directly behind them, would you see Fong's, or was that
23 person away from the front of Fong's?
24 A Past Fong's.
25 Q Past. Do you know what's next to Fong's over

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SHEET 74

Wright - Cross

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1 here as we get towards Scheerer?
2 A Uh-huh.
3 Q What's over there?
4 A Insurance company.
5 Q If you were looking beyond the person you saw
6 running is the insurance company there or something
7 else?
8 A It's an insurance company.
9 Q So --
10 A It's the insurance company and church together,
11 like you know --
12 Q So when you looked after you stepped out of
13 Roland's and you saw the person you think was Naeem and
14 he was turned sideways to you, just beyond that person
15 is that the insurance company now, or is it something
16 else?
17 A It's the insurance company.
18 Q Okay. The person you saw --
19 A -- and --
20 Q -- running --
21 A Go ahead.
22 Q -- was running, and when you first laid eyes
23 on them and they were in front of the -- front of the
24 insurance company, right?
25 A Just about in that area, around that.

Wright - Cross

147

1 Q And was that person jogging or were they
2 running fast?
3 A Running and jogging is what? It was --
4 Q Well, jogging is a little bit slower and
5 running is running. Which do you remember? Tell the
6 jury.
7 A I don't know.
8 Q You don't know?
9 A No. I seen Naeem running -- just running.
10 Q Describe the shirt that the person that you
11 saw had on.
12 A Huh?
13 Q The shirt, what did the shirt look like? Or
14 the top -- the jacket or the shirt?
15 A What are you talking about, now?
16 Q That night when you stepped out of Roland's
17 when you saw a person running in front of the area of
18 the insurance company towards Scheerer did you see
19 their clothing?
20 A I don't recall what they was wearing.
21 Q Do you recall if they had on a jacket?
22 A It's been four years. Yes, I'm quite sure. I'm
23 quite sure he had a jacket. It was cold.
24 Q Well, I'm not asking you to --
25 A But I don't recall what kind of jacket or if they

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SHEET 75

Wright - Cross 148

1 had it on. I don't -- I don't know. I don't know.
2 Q Okay. Well, do you recall that it did appear
3 to be a jacket or don't you know?
4 A I don't know. I don't know.
5 Q Do you recall if you were able --
6 A I don't recall nothing.
7 Q Do you recall if you were able to see the
8 pants, if any, that the person you saw over here in
9 front of the insurance company was wearing?
10 A Why would I be looking at somebody's clothes when
11 they're trying to get away from somewhere?
12 Q So is the answer no, you don't remember?
13 A I don't -- No, no.
14 Q By the way, when you were stepping out of the
15 bar, when you looked over here and saw this person
16 turned sideways, were there any other people either on
17 the street, on Bergen or on the sidewalk, in that -- in
18 that area in front of you at that time?
19 A What do you mean, over by the insurance company?
20 Q No, over by you.
21 A By me? Yes, there was people out there.
22 Q Some of those people were some of the people
23 who were out there when the shots were fired, right?
24 A I have no idea if they was out there when shots
25 were fired. I wasn't out there.

Wright - Cross 149

1 Q Okay. Well, let's -- let's focus in on that
2 time frame for a minute. How long between the time
3 that you heard the last shot that you heard and the
4 time that you stepped through the door onto the
5 sidewalk?
6 A Maybe not even what, 10 seconds -- 10 seconds at
7 the most.
8 Q Well, if you remember -- if you don't that's
9 fine, just tell us -- but let's try to be more
10 specific. Was it 10 seconds or was it 15 seconds?
11 A I'm giving you 10 to 15 seconds after the last
12 shot that I heard is when I left out.
13 Q Okay. So you heard the last shot, 10 to 15
14 seconds go by, you still haven't gotten out that door,
15 right?
16 A No.
17 Q Am I correct?
18 A Ten to 15 seconds is when I left out the door. I
19 would say 15 seconds, then I left out. Oh, God.
20 Q So after that last shot 15 seconds go by,
21 then you step through the door, right?
22 A Yes.
23 Q And then did you immediately look and see a
24 person in front of the insurance who were running, or
25 was there some period of time that transpired first?

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SHEET 76

Wright - Cross

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1 A When I walked out the bar is when I seen Timothy
2 first, then looked up and seen the person running.

3 Q Okay. So you said you saw Timothy first.
4 Timothy was much closer to you, right?

5 A Yes.

6 Q Timothy was laying in the area of the curb,
7 right?

8 A Yes.

9 Q The curb in front of Roland's, right?

10 A Yes.

11 Q So Timothy was more closer to you like -- up
12 like this on you, right? Somewhere in this area? How
13 far were you from Timothy when you first saw him?

14 A Maybe from here to the table.

15 Q This table in front of you, the counsel
16 table?

17 A Yes, I would say so. I would say so.

18 Q Okay. So approximately 15 feet, that's fair
19 to say?

20 A I would say so, yes.

21 Q And when you first laid eyes on him lying
22 down were you surprised?

23 A I didn't know if he was dead or not and I wasn't
24 trying to find out.

25 Q Okay. Well, but you saw him down there and

Wright - Cross

151

1 your eyes went to him.

2 A Yes.

3 Q And you looked at him, right?

4 A Yes.

5 Q Could you tell that he was injured at that
6 time?

7 A Yes.

8 Q And you could tell that by seeing the wound.
9 You could see that he was wounded.

10 A Blood, everything, yes.

11 Q Did you see Stacy Davis that night?

12 A That night, yes.

13 Q Did you see him in the bar?

14 A Yes, I did -- No, no, I didn't see him in the bar
15 because I didn't know who he was. I don't know him.

16 Q Well, as you sit here --

17 A I don't know him.

18 Q Okay. Well --

19 A I've seen him after this incident, but in the bar
20 that night I don't recall seeing him in the bar. You
21 know, there's plenty of people in a bar you don't know,
22 you're not going to, you know?

23 Q Sure. You -- you said you saw Stacy Davis
24 since this incident.

25 A Yes.

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SHEET 77

Wright - Cross

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1 Q How many times?
2 A Once.
3 Q Where?
4 A At -- at the jury.
5 Q At the grand jury, is that correct?
6 A Yes.
7 Q When you testified before the Essex County
8 Grand Jury back on May 9th of 2003?
9 A Yes.
10 Q Did you speak to him at that time?
11 A No. I don't know him.
12 Q Okay. And -- But now you saw him in front
13 of the grand jury there. Can you tell the jury on
14 December 16th of 2001 did you see him that night?
15 A I don't recall his face. I don't. I don't recall
16 his face. If he was to walk in here right now I don't
17 know who he is. I don't recall his face.
18 Q So did you see another person who was down on
19 the ground other than Timothy?
20 A Was he on the ground? I don't recall him being on
21 the ground either.
22 Q Well, did you see another person either
23 sitting or looking like they had been injured?
24 A Yes, because he -- Yes.
25 Q Where was that person?

Wright - Cross

153

1 A He was standing against the -- the -- It's a
2 store with a gate next to the -- the bar. I seen this
3 guy standing there. Now, if it was Stacy I don't know
4 for sure.
5 Q Well, did that person appear to be injured as
6 well?
7 A Not to me.
8 Q Okay. So --
9 A At the time.
10 Q I'm sorry. Go ahead.
11 A Not to me he didn't look injured.
12 Q So just so we're clear for the jury, the only
13 person you saw when you stepped out of the bar that
14 appeared injured was Timothy.
15 A Yes.
16 Q And so you looked at Timothy. Did you take
17 any steps towards Timothy at that time?
18 A No.
19 Q Okay. Did you try to take steps away from
20 Timothy at that time?
21 A I'm trying to get home.
22 Q So you wanted to get out of there.
23 A Yes.
24 Q And did you start to walk in one direction or
25 the other?

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SHEET 78

Wright - Cross 154

1 A Straight across. Straight in front of me, home,
2 going home.
3 Q So you were going towards Custer?
4 A Yes.
5 Q And you were walking across?
6 A I walked right out the bar, in a round -- out into
7 the street and up to Custer.
8 Q So you turned to the right or to the left to
9 go home after you go straight?
10 A I have to go to my right.
11 Q But did you cross to where Fong's was?
12 A I didn't go all the way on the sidewalk, no.
13 Q Did you get into the --
14 A Diagonally cross the street. Huh?
15 Q I'm sorry. Go ahead.
16 A Diagonally walk right across the street, right
17 into the street and straight across. I didn't go like
18 right directly into Fong's.
19 Q And you were going to your right.
20 A Yes.
21 Q And you got -- So you started going towards
22 Fong's, but then you angled diagonally.
23 A Yes.
24 Q Eventually did you get on the sidewalk, on
25 the same side of the street as Fong's?

Wright - Cross 155

1 A Not where Fong's at, across Renner on that -- the
2 next sidewalk, yes.
3 Q All right. So you -- you were quite a bit
4 down before you actually got on the sidewalk.
5 A Yes.
6 Q All right. I want to bring you back now for
7 a minute to when you first stepped out of the bar again
8 and ask you, you looked at Timothy on the ground.
9 A Uh-huh.
10 Q And you -- you made a decision in your mind
11 that you didn't want to go to him, you wanted to get
12 out of there.
13 A Yes.
14 Q True?
15 A Yes.
16 Q But somewhere in-between that time that's the
17 time that you looked across the street and could see a
18 person running.
19 A Yes.
20 Q Right? And, again, we're talking about
21 somebody that was that far back. Now, by the way, that
22 night you couldn't see the clothing. Could you see
23 what the hair looked like of the person?
24 A Yes, you could see the dreads.
25 Q It was dreads?

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SHEET 79

Wright - Cross

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1 A Yes.
2 Q Were there any other people around that night
3 that had dreads in their hair?
4 A Everybody got dreads there -- around there.
5 Q Everybody got dreads, don't they?
6 A Yes.
7 Q Back in 2001. What about twists? Is that
8 different than dreads?
9 A No, there's no difference.
10 Q Kind of the same thing, just maybe a little
11 different length, right?
12 A Uh-huh.
13 Q So everybody had dreads. So you indicated
14 from that distance -- and just so we're clear -- you
15 saw an automatic, you said, right? True?
16 A Yes.
17 Q The automatic you said was black, right, a
18 dark color?
19 A A dark color.
20 Q The person that had the gun in their hand,
21 was it their right hand or their left hand?
22 A Right.
23 Q Are you sure?
24 A Positive.
25 Q So as they're turned this way running in

Wright - Cross

157

1 front of the insurance company toward Scheerer Avenue
2 the gun is in their right hand, correct?
3 A Yes.
4 Q And how do you know it wasn't a revolver?
5 A Because I know what a revolver look like.
6 Q What's the difference between a revolver and
7 an automatic?
8 A A revolver have a -- a revolver, wheel, and an
9 automatic have a clip.
10 Q Okay. How big is a clip on an automatic?
11 You could show us with your hands, okay?
12 A Maybe like this.
13 Q And the clip, that's where the ammunition
14 goes, right?
15 A Yes.
16 Q You're familiar enough with guns to know that
17 clip goes into the gun somewhere, right?
18 A Yes.
19 Q The clip goes into the bottom of the butt of
20 the gun, right?
21 A Yes.
22 Q That's on an automatic, right? On a revolver
23 the bullets are placed in and then the middle of the
24 gun spins, right?
25 A Yes.

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SHEET 80

Wright - Cross

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1 Q And that part where the gun spins, show the
2 jury, how big is that part on a revolver?

3 A huh?

4 Q How big is the part that spins on a revolver?

5 MR. DeMATTIA: Well, Judge, I have to object
6 because there's many different types of guns and -- and
7 I don't believe that she should be put in the position
8 to say what a revolver that wasn't involved in this
9 incident looks like.

10 THE WITNESS: I'm ready to go.

11 THE COURT: Overruled.

12 MR. GORDON: She said she's very familiar.

13 THE COURT: Overruled. You can answer the
14 question.

15 THE WITNESS: He wants to know how big is a
16 barrel on a -- on a revolver? That's what you want to
17 know?

18 BY MR. GORDON:

19 Q Not the barrel, the part where you put the
20 bullets in.

21 A What, the holes?

22 Q The thing that spins in the middle.

23 A That's a barrel, ain't it? It's round like this?

24 Q Okay. So the thing that distinguishes, in
25 your experience, the automatic from the revolver, the

Wright - Cross

159

1 one has something about this big, right? That's the
2 revolver, right?

3 A Uh-huh.

4 Q The thing that goes in the automatic it's a
5 clip, right?

6 A Yes.

7 Q Doesn't a clip go into the gun?

8 A It don't go into no revolver.

9 Q On the automatic.

10 A Oh, yes, it do.

11 Q The clip goes into the gun.

12 A Yes.

13 Q So if someone were holding an automatic, are
14 you saying that you didn't see the round part that
15 spins on the revolver on the gun you saw? Is that what
16 you're saying?

17 A What revolver -- What are you talking about?
18 What revolver?

19 Q Confused. Let me try again. Maybe I
20 confused you. You knew, because you just told this
21 jury, you saw an automatic weapon in the hand of a
22 person --

23 A I know what I seen.

24 Q -- 46 feet away at night, right?

25 A Uh-huh.

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SHEET 81

Wright - Cross

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1 Q And you knew it was an automatic. You could
2 tell, right, just because of the shape of the gun?

3 A Yes.

4 Q Okay. And the shape is different than the
5 revolver shape, right?

6 A Yes.

7 Q And the reason it's different isn't it
8 because on the revolver you have that spinning middle
9 of the gun where the bullets go in, right, that part
10 that you just told us is this big, right?

11 A No, not necessarily that. A revolver have a
12 longer -- you know, have a nose on it.

13 Q Okay. A longer nose. You mean where the
14 bullet comes out?

15 A It -- it have a -- a revolver have a snout on it
16 like a nose on it.

17 Q Okay. And the automatic has what?

18 A Is -- it's more squarer, you know?

19 Q So you were able to see that the gun that you
20 saw was more square and not as what?

21 A And not as long. It's not as long as -- the nose
22 wasn't longer on it.

23 Q Okay. So when the person that you saw with
24 the gun in their hand, their right hand, running like
25 this across that street, you could tell as they ran

Wright - Cross

161

1 that that gun was more square than a revolver.

2 A Yes.

3 Q Is that what you're telling this jury?

4 A That's what I'm telling you.

5 Q But the jacket you don't know.

6 A I don't recall no jacket or none of that.

7 Q Well, is it possible that the person who was
8 running didn't have a jacket?

9 A I don't know. Maybe it is possible --

10 Q You don't even know that, do you?

11 A -- that he didn't have a jacket.

12 MR. GORDON: May I just have a moment, Your
13 Honor?

14 THE COURT: Sure.

15 BY MR. GORDON:

16 Q Now, Ms. Wright, after that time that you saw
17 what you saw you left and went home, right? Is that
18 true?

19 A Yes.

20 Q And other than testifying at the grand jury
21 in May of 2003 and coming here to court today you've
22 never testified about any of this, right?

23 A Never.

24 Q Is that true?

25 A That's true.

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SHEET 82

Wright - Cross / Redirect 162

1 MR. GORDON: Thank you. I have nothing
2 further, Your Honor.
3 THE COURT: Redirect?
4 REDIRECT EXAMINATION BY MR. DeMATTIA:
5 Q But if you didn't know the type of jacket
6 that this individual was wearing, do you know who the
7 individual was running with the gun?
8 A When I looked up and seen the individual I thought
9 deeply that it was him, and until like, you know, the
10 same night you got everybody you know Naeem did this,
11 you know Naeem did that and -- You know what I'm
12 saying, this is --
13 Q Well, let me ask you this. How many -- Once
14 again, I want to establish. How many times have you
15 seen this person before December 16th, 2001?
16 A Naeem? Plenty, plenty of times.
17 Q Plenty. Can you give us a number? I know
18 that might be hard but I'm now in a position where I
19 have to ask you.
20 A Many, many times. Many times. A number? Many
21 times.
22 Q Well, a number, thousand?
23 A Thousands of times.
24 Q Okay. Beside Naeem Miller was anyone else
25 running with a gun in their hand, that you saw?

Wright - Redirect 163

1 A No.
2 Q Now, was there enough lighting for you to see
3 anything?
4 A There was enough --
5 Were you able to see?
6 A Yes, I could see.
7 Q Do you wear glasses to see?
8 A No.
9 Q Did you ever wear glasses?
10 A No.
11 Q Do you need glasses today?
12 A No.
13 Q Did you need glasses on the night of December
14 16th, 2001?
15 A No.
16 Q With regard to a time frame, you said 10 to
17 15 seconds. Were you looking at your watch and timing
18 yourself?
19 A No.
20 Q Was it an estimate on your part?
21 A No.
22 Q Was it an estimate? Was it a guess? Was it
23 fact? I mean, how do you -- You know --
24 A I mean --
25 Q You didn't time yourself, did you?

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SHEET 83

Wright - Redirect 164

1 A I paused. You know, you just pause for a minute.
2 Q Okay. You said you had seen the family of
3 Timothy Phillips today obviously.
4 A Yes.
5 Q You said that for Mr. Gordon, correct?
6 A Yes.
7 Q How did it make you feel?
8 A Uncomfortable.
9 Q Okay. Do you see the family for Naeem Miller
10 today?
11 A Yes.
12 Q And how does that make you feel?
13 A Uncomfortable.
14 Q Where is the family of Naeem Miller today
15 right now?
16 A To my right.
17 Q Excuse me?
18 A To my right.
19 Q Okay. Do you recognize the people to your
20 right?
21 A Yes.
22 Q Who do you recognize?
23 A His mom, his brothers, cousins, his sister.
24 Q How does that make you feel?
25 A Bad, wrong.

Wright - Redirect / Recross 165

1 Q Why?
2 A Because I don't want to be here.
3 MR. DeMATTIA: No further questions, Your
4 Honor.
5 THE COURT: Mr. Gordon?
6 RECROSS-EXAMINATION BY MR. GORDON:
7 Q Ms. Wright, didn't you just said that people
8 were saying Naeem did this and Naeem that? Did you say
9 that in front of this jury?
10 A Yes.
11 Q In fact, you're not sure as you sit here
12 today and when Naeem is on trial that he's the person
13 that you saw that night. You're not 100 percent, are
14 you?
15 A When I looked up I -- I said it was him, but then
16 I was sure after, you know, people were saying what
17 they were saying.
18 Q Okay. So I think -- correct me if I'm wrong
19 -- but what you're telling this jury is you thought it
20 was Naeem.
21 A Yes.
22 Q It could have been Naeem. You believed it
23 might have been Naeem --
24 A Uh-huh.
25 Q -- but later when you heard some other person

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SHEET 84

Wright - Recross / Redirect 166

1 from the street say something then in your mind you
2 felt stronger that it was Naeem. Is that fair to tell
3 these people?
4 A Yes. Yes.
5 Q But prior to hearing whatever you heard,
6 whenever you heard it, you were not 100 percent sure.
7 A I was --
8 Q You had a doubt in your mind.
9 A No.
10 Q You believed it might have been him but you
11 had a doubt, didn't you?
12 A It's possible, yes.
13 MR. DeMATTIA: Nothing further, Your Honor.
14 THE WITNESS: But I'm not --
15 REDIRECT EXAMINATION BY MR. DeMATTIA:
16 Q When did this doubt occur, Ms. Wright? Five
17 seconds ago?
18 A No.
19 Q Do you have a doubt that it was Naeem Miller
20 running on the street with the gun that evening?
21 A No, I was certain it was him, but you -- I don't
22 know. I don't -- I don't know.
23 Q And then people on the street started talking
24 also that it was him?
25 A Yes.

Wright - Redirect / Colloquy 167

1 Q As Mr. Gordon said?
2 A Yes.
3 MR. DeMATTIA: I have nothing further, Judge.
4 THE COURT: Mr. Gordon?
5 MR. GORDON: Your Honor, I'm done with this
6 witness.
7 THE COURT: Thank you, Ms. Wright. You're
8 excused.
9 THE WITNESS: Thank you.
10 THE COURT: All right, ladies and gentlemen.
11 We're going to take our mid-afternoon break. We'll see
12 you back here at 3 o'clock. Remember please do not
13 discuss the case among yourselves or obviously with
14 anyone else.
15 (Recess)
16 THE COURT: All right, ladies and gentlemen.
17 We will continue. Mr. DeMattia, please call your next
18 witness.
19 MR. DeMATTIA: Detective Murad Muhammad.
20 THE COURT: Detective Muhammad to the stand,
21 please. Good afternoon, sir.
22 THE WITNESS: Good afternoon, Your Honor.
23 THE CLERK: Raise your right hand, sir.
24 M U R A D M U H A M M A D, STATE'S WITNESS, SWORN
25 THE CLERK: State your name, please?

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Muhammad - Direct 168

1 THE WITNESS: Murad Muhammad.
2 THE COURT: Mr. DeMattia?
3 DIRECT EXAMINATION BY MR. DeMATTIA:
4 Q Sir, by whom are you employed?
5 A City of Newark, the Homicide Squad.
6 Q And for how long have you been assigned to
7 the Homicide Squad?
8 A Approximately eight years.
9 Q And you're at the rank of detective,
10 Detective Murad Muhammad?
11 A That's correct.
12 Q And how long did you say? I'm sorry.
13 A About eight years.
14 Q And before that?
15 A Going for my 14th year.
16 Q As a police officer?
17 A That's correct.
18 Q What are some of your duties with relation to
19 your position in the Homicide Squad.
20 A To investigate auto fatalities and deaths of
21 individuals.
22 Q Did you have occasion to become involved in
23 the investigation of the death of a Mr. Timothy
24 Phillips and a shooting of a Mr. Stacy Davis that
25 occurred on December 16th, 2001 in the vicinity of

Muhammad - Direct 169

1 Toby's Lounge, 966 Bergen Street, City of Newark?
2 A Yes, that's correct.
3 Q Were you assigned to investigate that matter
4 with anyone from my office?
5 A Yes.
6 Q And who was that?
7 A Investigator Benjamin Powell.
8 Q And is Investigator Benjamin Powell available
9 nowadays?
10 A No, he's not.
11 Q What has happened to Investigator Powell?
12 A Investigator Powell died.
13 Q As a result of a?
14 A Car accident.
15 Q Okay. After the start of this investigation.
16 A That's correct.
17 Q Approximately August of last year?
18 A Yes.
19 Q Were you the on-scene investigator at that
20 particular time for this investigation? Did you arrive
21 there that evening?
22 A No, I did not.
23 Q Okay. You picked it up when, sir?
24 A On the 17th.
25 Q When you picked it up on the 17th did you

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Muhammad - Direct

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1 collaborate with Investigator Powell?

2 A Yes.

3 Q Okay. What are some of the things you did
4 with Investigator Powell with regard to this
5 investigation?

6 A We reviewed reports that were submitted, and we
7 went to the scene.

8 Q Okay. That was hours later?

9 A Yes.

10 Q And at the scene what did you do?

11 A We talked to people and we looked to see what the
12 scene looked like.

13 Q Okay. Are you familiar with that area?

14 A Yes.

15 Q And what is located at 966 Bergen Street?

16 A A bar called Toby's Lounge.

17 Q And the streets that are closest to it on
18 each side of the block, let's say?

19 A Scheerer Avenue and Renner Avenue, I believe.

20 Q And approximately how far is the intersection
21 of Nye Avenue and Goodwin Avenue from that location, if
22 you know?

23 A Approximately three -- three to four blocks.

24 Q And how about Huntington Terrace?

25 A About the same, two or three blocks.

Muhammad - Direct

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1 Q When you went to that area, you say with
2 Detective Powell, you weren't able to get any
3 identifications of any suspects, were you?

4 A No.

5 Q Did you ever talk to the brother of the
6 decedent, Mr. Timothy Phillips? I guess his name is
7 Rubin Phillips, or Kevin Rubin Phillips?

8 A Yes.

9 Q Was he able to make the identification of
10 anyone who was responsible for the shooting?

11 A No.

12 Q Did there come a time when you responded to
13 the hospital where the surviving victim, Mr. Davis, had
14 been taken and questioned him on December 18th, 2001?

15 A Yes.

16 Q He was not able to make an identification at
17 that time, was he?

18 A No, he was not.

19 Q What was his condition at that time?

20 A He had suffered a gunshot wound to the left leg
21 and he was in some pain.

22 Q Now, did there come a time when through you
23 and your efforts and Investigator Powell's efforts that
24 you approached a Superior Court judge for a warrant in
25 this matter?

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Muhammad - Direct

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1 A Yes.
2 Q And was that on January 18th of 2002?
3 A I believe so.
4 Q And yourself and Ben Powell went to the court
5 of Judge Fullilove for what purposes?
6 A For arrest warrants.
7 Q For which individual?
8 A Naeem Miller.
9 Q And upon getting that arrest warrant in
10 January, January 18th of 2002, what did you do?
11 A We went looking for the suspect.
12 Q When you say you went looking for the suspect
13 what efforts did you make?
14 A We went to try and take him into custody at a
15 location that we knew that he probably resided at.
16 Q And what was that?
17 A 46 Goodwin Avenue, I believe.
18 Q And is that near the intersection of Goodwin
19 Avenue and Nye Avenue in the City of Newark?
20 A Yes.
21 Q And were you able to locate Mr. Miller at
22 that time?
23 A No.
24 Q Okay. Did you speak to anyone?
25 A Yes.

Muhammad - Direct

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1 Q Who did you speak to?
2 A I spoke to his brother and his parents.
3 Q And what did you tell them?
4 A Told them that we had arrest warrants for Mr.
5 Miller and also the circumstances of the arrest
6 warrant.
7 Q Okay. Did you tell them what the arrest
8 warrant was for?
9 A Absolutely.
10 Q Did you go anywhere else to locate Mr.
11 Miller?
12 A Yes, we did.
13 Q Where?
14 A We went to a location I believe it was in East
15 Orange, and then the neighborhood.
16 Q Okay. How many times did you attempt to
17 canvas areas to locate Mr. Miller?
18 A Several.
19 Q When that homicide warrant was secured and
20 there is a suspect not arrested yet do you do anything
21 with regard to your search with that warrant? Do you
22 place it in any computer?
23 A Yes, we do.
24 Q Explain to the jury what you mean by that.
25 A When you're looking for a suspect who's wanted you

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Muhammad - Direct 174

1 put him into a system, it's NCI/SCI. It's a national
2 and state system that notifies all other agencies in
3 cities and in states for the suspect.
4 Q And did you do that with regard to this
5 homicide warrant for Mr. Miller?
6 A Yes, we did.
7 Q Did you also prepare anything to disseminate
8 in the immediate neighborhood of the location of where
9 Mr. Miller's residence was?
10 A Yes.
11 MR. DeMATTIA: Your Honor, it's been marked
12 S-3 for identification.
13 BY MR. DeMATTIA:
14 Q I want to show you what's been marked S-3 for
15 identification. Do you recognize that?
16 A Yes.
17 Q What is it?
18 A It's a wanted poster.
19 Q Does -- does it have the picture of any
20 particular individual?
21 A Yes, it does.
22 Q Who?
23 A Naeem Miller.
24 Q Okay. Do you see Naeem Miller in court
25 today?

Muhammad - Direct 175

1 A Yes, I do.
2 Q Can you point and describe what he's wearing?
3 A The gentleman over to my right in the black
4 sweater with the t-shirt that's colored white.
5 THE COURT: Indicating the defendant.
6 BY MR. DeMATTIA:
7 Q Does he look -- today does he look like that
8 picture you put in the wanted poster?
9 A Similar, yes.
10 Q What's different?
11 A The beard and the afro. He has a low haircut in
12 this flyer. It has braids.
13 Q Long?
14 A Short -- short braids.
15 Q What did you do with that?
16 A Well, what we did with this here we -- we put it
17 out on cars, we put it out on the immediate area of the
18 house where he resided at and in Bergen Street where
19 the incident occurred.
20 Q Did you give it to any people?
21 A Yes, I did.
22 Q Do you recall what people you gave it to?
23 A Just people in the area.
24 Q What area?
25 A Huntington Terrace, Shephard, Renner, Bergen

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Muhammad - Direct 176

1 Street, and where he live at.
2 Q Did you contact any out-of-state locales in
3 order to attempt to find him?
4 A Yes, we did.
5 Q Which locales were they?
6 A I believe it was North Carolina and Pennsylvania.
7 Q Any others?
8 A I can't recall.
9 Q Were you able to locate him at that point?
10 A No.
11 Q How many times would you say you visited that
12 area in an attempt to locate Mr. Miller?
13 A Several. More than -- more than seven.
14 Q And how long did this go on for, Detective?
15 A It went on for a while.
16 Q Was Mr. Miller eventually located?
17 A Yes, he was.
18 Q Do you recall the date in May of 2004 that he
19 was located?
20 A No, I don't.
21 Q But he was located at that time in May of
22 2004?
23 A Yes.
24 Q Where was he located?
25 A I believe it was Pennsylvania.

Muhammad - Direct / Cross 177

1 Q Do you know what town it was?
2 A I believe it was Stratton or --
3 Q Scranton, Pennsylvania?
4 A Right, correct.
5 Q Now what family members had you talked to to
6 inform them that Mr. Miller was wanted for murder?
7 A His brother, his father and his mother.
8 MR. DeMATTIA: I have no further questions,
9 Judge.
10 THE COURT: Cross-examine.
11 MR. GORDON: Thank you, Your Honor.
12 CROSS-EXAMINATION BY MR. GORDON:
13 Q Detective, were you the lead investigator
14 assigned to this case?
15 A We both were, Investigator Powell and myself.
16 Q So you were the co -- co-detectives handling
17 the investigation, is that fair to say?
18 A Yes, that's fair to say.
19 Q And Investigator Powell was a member of the
20 Essex County Prosecutor's Office, correct?
21 A That's correct.
22 Q And you were a member of the Newark Police
23 Department?
24 A Yes.
25 Q The Robbery/Homicide Section, is that correct?

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Muhammad - Cross

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1 A Yes.

2 Q And when you were assigned the case on
3 January 17th of 2002 you indicated that you reviewed
4 some reports at that time?

5 A Yes, sir.

6 Q And that was to familiarize yourself with the
7 circumstances surrounding the event, correct?

8 A Correct.

9 Q And also to familiarize yourself with
10 whatever efforts law enforcement had made up until that
11 time in the investigation so that you would not, at
12 least for one reason, not duplicate their work, is that
13 correct?

14 A Yes, that's fair to say.

15 Q And did you have an opportunity before you
16 came here to testify today to review any papers in the
17 recent past with regard to this case?

18 A Yes.

19 Q Do you recall approximately when that was?

20 A About a week.

21 Q A week ago from today?

22 A Yes.

23 Q And do you recall what documents you reviewed
24 in preparation for your testimony before this jury?

25 A My reports that I executed.

Muhammad - Cross

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1 Q Did you have multiple reports or just one
2 report?

3 A I have one report.

4 Q And did you review anything other than your
5 own report in preparation for your testimony?

6 A Yes.

7 Q What else did you review?

8 A The file on this here incident.

9 Q When you say the file do you know where the
10 file is located right now?

11 A No, I do not.

12 Q At that time did you go and retrieve the
13 file, is that fair to say?

14 A No, I did not.

15 Q Okay. In order to review the file how did
16 you get it?

17 A From the A.P.

18 Q So you went to Mr. DeMattia and got it from
19 him?

20 A My reports I got them from 22 Franklin Street.

21 Q That's where your office is located, your
22 headquarters?

23 A Exactly.

24 Q For Robbery/Homicide?

25 A Yes.

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Muhammad - Cross

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1 Q So some of the reports were located there a
2 week ago and that's where you obtained them, correct?

3 A Yes.

4 Q And some of the reports were in the
5 possession of Mr. DeMattia in the Prosecutor's Office?

6 A Yes.

7 Q All right. And do you recall now as you sit
8 here today whether or not you were aware of anyone
9 interviewing Stacy Davis prior to your being assigned
10 the case on January 17th of -- I'm sorry -- December
11 17th of 2001?

12 A Yes.

13 Q Do you recall if that occurred?

14 A Repeat the question?

15 Q Do you recall if it occurred that some other
16 person interviewed Mr. Davis prior to you being
17 assigned the case on December 17 of 2001?

18 A Yes.

19 Q Do you recall -- Did that happen?

20 A Yes.

21 Q Do you recall who it was that conducted an
22 interview?

23 A Detective LeBella.

24 Q And do you know where Detective LeBella
25 conducted that interview?

Muhammad - Cross

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1 A I don't recall.

2 Q All right. Did you -- When you became aware
3 of it was that through some report that you reviewed,
4 or from speaking to someone, or something else?

5 A Report.

6 Q And was that through a report that Detective
7 LeBella offered?

8 A Yes.

9 Q Do you know a Detective DeFabio, Michael
10 DeFabio?

11 A Yes.

12 Q Do you know at that time in December of 2001
13 where he was assigned to work?

14 A I believe the Robbery Squad.

15 Q So he was with you in the Robbery Squad
16 working in that squad at that time.

17 A With Detective LeBella.

18 Q With Detective LeBella. And did you learn,
19 without telling us what you learned, did you learn the
20 details of that interview that you say you believe
21 Detective LeBella conducted with Stacy Davis?

22 A Yes.

23 Q And did you interview or discuss that with
24 Detective LeBella?

25 A I believe so.

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Muhammad - Cross

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1 Q To the best of your knowledge, when that
2 interviewed occurred was Detective DeFabio there?

3 A I don't recall.

4 Q Now, I take it it was your intention at the
5 time that you were assigned the case to do everything
6 you could to solve the crime and close the case, is
7 that fair to say?

8 A Yes.

9 Q You and Investigator Powell, correct?

10 A That's correct.

11 Q Were you aware if any -- Well, let me ask
12 you this. Do you know what a crime bulletin is?

13 A Yes.

14 Q What is a crime bulletin?

15 A A crime bulletin can consist of information on a
16 -- a target or a suspect that's wanted.

17 Q And does that information get placed into
18 some writing, or is it something that goes over the
19 air, or something different?

20 A It -- it varies.

21 Q Is it fair to say that sometimes a crime
22 bulletin is reduced to writing so that there's actually
23 something you could read that's the crime bulletin?

24 A Yes.

25 Q And is that, to the best of your knowledge,

Muhammad - Cross

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1 generally speaking first, an internal thing that goes
2 just within your unit of robbery/homicide, or does that
3 get disseminated to other persons?

4 A It's disseminated through the squad and it has to
5 be reviewed.

6 Q So, am I correct, is it fair to say to the
7 jury that a crime bulletin is generally an internal
8 memo within the squad?

9 A Yes.

10 Q Does it happen, in your experience, that
11 sometimes the information in the bulletin gets
12 disseminated to other law enforcement agencies
13 throughout the City of Newark?

14 A Not on the crime bulletin.

15 Q Have you had an opportunity in your
16 experience as a detective in robbery/homicide to come
17 to see different crime bulletins over the years?

18 A Yes.

19 Q And do you recall in this case when you were
20 assigned on December 17, 2001, do you recall reviewing
21 any crime bulletins that had been generated in this
22 case the day before December 16th?

23 A The day before I received this investigation?

24 Q Correct.

25 A Okay, before the 17th. That's correct.

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Muhammad - Cross

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1 Q Okay. And do you recall seeing a crime
2 bulletin that had been generated on the date of the
3 incident, December 16th, 2001?

4 A Yes, I believe so.

5 MR. GORDON: Your Honor, I would like to have
6 this document marked, if I could, for identification.
7 I'm showing it to the prosecutor now. I would request
8 that it be marked as D-1.

9 THE COURT: D-1 for identification.

10 MR. GORDON: Thank you.

11 BY MR. GORDON:

12 Q Detective Muhammad, I'm showing you now
13 what's been marked as D-1 for identification. I'll ask
14 you please to review that document and tell me when
15 you're finished.

16 A Okay.

17 Q Detective, do you recall if that is a crime
18 bulletin? Well, what is that document, Detective?

19 A It's a crime bulletin.

20 Q And is that a crime bulletin such as you've
21 just been describing to the jury that you've seen
22 before in your experience?

23 A Yes, sir.

24 Q Does it indicate on the printed part of it --
25 that would be on the form itself, not the details of

Muhammad - Cross

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1 the incident, but the printed form -- Crime Bulletin
2 Robbery/Homicide Section?

3 A Yes.

4 Q Does it indicate right under there attention
5 all units city-wide?

6 A Yes.

7 Q And did -- did you -- and -- and to the best
8 of your knowledge -- is this crime bulletin related to
9 the investigation of the death of Timothy Phillips?

10 A Yes, it is.

11 Q Are you able to tell that in part because of
12 the CC number?

13 A Yes.

14 Q That CC number that's indicated there, a CC
15 number is a Central Complaint number, correct?

16 A That's correct.

17 Q And, in fact, any event that's reported in
18 the City of Newark where -- where police get involved
19 ultimately gets assigned a Central Complaint number, is
20 that fair to say?

21 A Yes, sir.

22 Q And in this case, to the best of your
23 knowledge, does the CC number reflected there indicate
24 the investigation of the death of Timothy Phillips?

25 A Yes.

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Muhammad - Cross

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1 Q Now, when you were assigned the case and you
2 indicated you reviewed a crime bulletin, are you able
3 to tell the jury now is this document the document that
4 you reviewed when you were assigned the case?

5 A Yes.

6 Q And without regard to the details of this
7 investigation, is what you see here in your experience
8 common? Is that what a crime bulletin generally looks
9 like, and does it appear to be what a crime bulletin is
10 used for?

11 A It depends on its office procedures.

12 Q Okay. So -- so, correct me if I'm wrong,
13 it's fair to say that a generation of this type of
14 document in a robbery/homicide case, or a case where
15 robbery/homicide is involved, is something that's
16 normal, in the normal course of your business, is that
17 correct?

18 A Yes.

19 Q And do you know generally speaking who is it
20 that fills out or authors a robbery/homicide crime
21 bulletin?

22 MR. DeMATTIA: Well, Judge, I would object to
23 the general nature of it. If we're trying to find out
24 who authored this I believe the question should be who
25 authored this report, if this witness did, not the

Muhammad - Cross

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1 general nature of things.

2 MR. GORDON: I'm getting there, Your Honor.

3 THE COURT: Okay, thanks.

4 MR. GORDON: Can he answer that one?

5 THE COURT: Yes.

6 BY MR. GORDON:

7 Q Can you answer my question, Detective, do you
8 know?

9 A Repeat it, please?

10 Q Sure. Do you know generally is it someone
11 from robbery/homicide that generates a document like
12 this, or could it be somebody else? Who generally does
13 it?

14 MR. DeMATTIA: I -- I renew my objection,
15 Your Honor.

16 THE COURT: I'll allow it.

17 THE WITNESS: The primary investigator.

18 BY MR. GORDON:

19 Q All right. Now, when you say primary
20 investigator, just so we're clear, in this case you and
21 Investigator Powell, Ben Powell, were you the primary
22 investigators?

23 A Not at the -- not at the moment of this here
24 bulletin.

25 Q I'm sorry. So is it fair to say then that

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Muhammad - Cross

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1 before you got assigned in this case somebody else from
2 the time that it first got reported until you got
3 assigned was technically the primary investigator?

4 A That's correct.

5 Q All right. Do you know as you sit here today
6 who the primary investigator was on the case from
7 December 16th, when it was reported, until you got the
8 assignment on December 17th?

9 A DeFabio or either LeBella.

10 Q And we're talking about again Detective
11 Michael DeFabio or Detective John Lebella?

12 A That's correct.

13 Q They're both members of the Robbery/Homicide
14 Section.

15 A That's correct.

16 Q Now, when you reviewed this document and you
17 got assigned the case, did you speak to either
18 Detective John LeBella or Detective Michael DeFabio
19 about the contents of the document? Without telling us
20 what was said did you have a conversation about the
21 contents of that document?

22 A I don't believe so.

23 Q But you were aware of the contents of the
24 document.

25 A Yes.

Muhammad - Cross

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1 Q Did you take any action -- When you got
2 assigned the case on December 17, 2001 did you take any
3 action to investigate the information that's in that
4 crime bulletin?

5 A Yes.

6 Q Can you tell us what steps you took and when
7 did you take them?

8 A I can't tell you which steps and when did I take
9 them.

10 Q Okay. Well, maybe I misunderstood you. Did
11 you take some steps based upon the information
12 contained in that document?

13 A Yes.

14 Q What steps did you take?

15 A I talked to Investigator Ben Powell.

16 Q So you conferred with him about the contents
17 of that document?

18 A Yes, the file.

19 Q I'm sorry?

20 A Yes, the whole file.

21 Q Okay. That was part of the file that you
22 reviewed.

23 A Yes.

24 Q And specifically with regard to the details
25 of the incident that are contained in that crime

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Muhammad - Cross

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1 bulletin did you discuss those -- without telling us
2 what was said -- specifically with Investigator Ben
3 Powell?

4 A I believe so.

5 Q And after you did that did that did either
6 you or he formulate a plan to act upon the details of
7 the incident that are contained in that crime bulletin?

8 A No, we did not.

9 Q Did you decide to purposely ignore that
10 information?

11 A No.

12 Q Did you decide that it was better not to
13 pursue the information in there at that time?

14 A No, we did not.

15 Q Well, you and Ben Powell decided not to act,
16 correct?

17 A That's not what I said.

18 Q Did you act?

19 A No, we did not.

20 Q You were aware of the information but you did
21 not act, correct?

22 A Not at that time.

23 Q And at that time you mean January -- December
24 17 -- excuse me -- of 2001.

25 A That's correct.

Muhammad - Cross

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1 Q At that point in time when you reviewed that
2 document on December 17, 2001, the suspect or suspects
3 in this case were still at large, correct?

4 A Yes.

5 Q They -- they were suspects. At that point in
6 time when you reviewed that information I take it you
7 had not taken a statement from any person, or you had
8 not reviewed a statement from any person that
9 identified Naeem Miller as the suspect in this case, is
10 that correct?

11 A That's correct.

12 Q Did you become aware of the identity or the
13 description of another suspect at that time that you
14 reviewed that crime bulletin on December 17 of 2001?

15 A No, I did not.

16 Q You did not become aware that there was
17 another suspect.

18 A No.

19 Q At the time that you reviewed that with
20 Investigator Powell did you take -- then take that
21 information contained in there in that crime bulletin
22 and discuss it with any other person other than
23 Investigator Powell?

24 A I don't believe so.

25 Q Did you take a statement from Kevin Phillips

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Muhammad - Cross

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1 at some point on -- Well, did you take a statement
2 from Kevin Phillips once you were assigned the case?

3 A Yes.

4 Q Do you recall the date?

5 A No, I do not.

6 Q Is it possible that it was either that day
7 that you got assigned the case or the next day?

8 MR. DeMATTIA: Judge, I wouldn't like the
9 detective to speculate so I object to possible --

10 THE COURT: Well, he said he forgets.
11 Anything that can be used to refresh his recollection
12 is appropriate.

13 MR. GORDON: Thank you, Judge.

14 BY MR. GORDON:

15 Q Detective Muhammad, I'm showing you what's
16 been marked S-2 for identification. I'll ask you
17 please to take a look at that and tell us when you've
18 finished looking at it?

19 A Okay.

20 Q Do you recognize what that is?

21 A Yes.

22 Q What is that?

23 A It's a continuation report that I -- I did.

24 Q So that's your report that you authored in
25 this case.

Muhammad - Cross

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1 A Yes.

2 Q And do you think reviewing that report now
3 would refresh your recollection as to if and when you
4 interviewed Kevin Phillips?

5 A It's possible.

6 Q Could you take a look and let me know when
7 you finish reviewing it, and tell me if it refreshes
8 your memory about when you interviewed Kevin Phillips?

9 A Okay.

10 Q Does it refresh your recollection?

11 A Yes.

12 Q And when was it that you interviewed Kevin
13 Phillips?

14 A It says on the 17th of December, 2001.

15 Q So that was the date that you were assigned
16 the case with Investigator Powell, correct?

17 A Yes.

18 Q And after interviewing Mr. Kevin Phillips I
19 take it you then became aware for the first time that,
20 in fact, Mr. Phillips had been in a violent
21 confrontation inside Roland's Bar on December 16th,
22 correct?

23 A Yes.

24 Q And, in fact, he described during the giving
25 of his statement, did he not, that the person that he

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Muhammad - Cross

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1 was in that violent confrontation with was a big person
2 who was in the neighborhood of 6-foot-1 and 260 pounds,
3 or thereabouts, is that correct?

4 A I have to refer to his statement.

5 Q All right.

6 MR. DeMATTIA: Your Honor, I'll ask that
7 another document be marked.

8 THE COURT: Okay.

9 BY MR. GORDON:

10 Q Detective Muhammad, I'm going to show you
11 what's been marked D-2 for identification and ask you
12 to take a look at that and tell us when you're
13 finished.

14 A It's a statement.

15 Q Do you recognize it?

16 A Yes.

17 Q And you reviewed it as part of your review of
18 this matter when you were assigned the case on December
19 17, 2001, is that correct?

20 A This statement was taken on the 17th.

21 Q And are you able to review that and tell us
22 if it refreshes your recollection about the height and
23 weight of the person that Kevin Phillips got into the
24 violent confrontation with inside Roland's?

25 A Yes.

Muhammad - Cross

195

1 Q Do you see that on Page 3 of the statement?

2 A Yes.

3 Q And the question was asked of Kevin Phillips
4 can you give me a good description of the guy that you
5 had the fight with inside the bar, and the answer was
6 he was between 275-290, medium-brown complexion,
7 approximately 6-foot-1 in height. Is that correct?

8 A That's correct.

9 Q Do you know if that information was ever
10 disseminated to any law enforcement on December 16th of
11 2001?

12 A No, I do not.

13 Q Did it ever come to your attention that
14 anyone of that description was being sought by any law
15 enforcement agency?

16 A No.

17 Q When you -- If I may just have that crime
18 bulletin and your report -- I'm sorry -- and your
19 report. When you reviewed the crime bulletin we talked
20 about earlier, that's marked D-1, did you at that time
21 -- I'm sorry. You reviewed that on December 17th,
22 2001.

23 A Yes.

24 Q Was that before or after the statement was
25 taken from Kevin Phillips?

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Muhammad - Cross

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1 A That was before.

2 Q And after reviewing the statement of Kevin
3 Phillips, or being made aware of its contents, did you
4 discuss with Investigator Powell the description that
5 Kevin Phillips had given of the person that he had the
6 fight with inside the bar?

7 A Yes, I believe so.

8 Q Did you discuss with Investigator Powell
9 whether or not that information had been transferred or
10 given to anyone citywide or inter- or intra-Homicide
11 Squad, or Robbery/Homicide, whether that information
12 had been given to anyone?

13 A No, we did not.

14 Q And after reviewing the crime bulletin did
15 you make any connection between the crime bulletin,
16 that you recognized earlier as being generated by
17 either Detective LeBella or Detective DeFabio in this
18 case, with the information that Kevin Phillips had
19 given about the description of his assailant?

20 A Yes.

21 Q And what was that?

22 A It was similar.

23 Q And based upon the fact that you, as the lead
24 investigator in the case, believed there was a
25 similarity, is it your testimony now that you and

Muhammad - Cross

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1 Investigator Powell did nothing to pursue that
2 information to attempt to solve this crime and to find
3 a suspect?

4 A No, it is not.

5 Q Then I'll ask you again, based upon all that
6 knowledge that you had at that point in time, you and
7 Investigator Powell did nothing about all that
8 description, correct?

9 A Yes, we did.

10 Q What did you do?

11 A We talked about it.

12 Q Other than talking about it -- you already
13 told the jury you talked about it -- other than talking
14 about it did you go anywhere or call anyone and talked
15 to anyone about it?

16 A Yes.

17 Q All right. Which one was it? Did you go
18 somewhere?

19 A We talked to Mr. Phillips.

20 Q And after you talked to Mr. Phillips did you
21 talk to anyone else?

22 A Yes.

23 Q Who did you talk to then?

24 A We talked to other people.

25 Q Did you talk to anyone whose name you can

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Muhammad - Cross / Redirect

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1 tell us now?

2 A No, I cannot.

3 Q And you didn't make any notation or anything
4 in the report about any other person that you spoke to
5 about that issue, right?

6 A That's correct.

7 MR. GORDON: Thank you. I have nothing
8 further.

9 THE COURT: Redirect?

10 MR. DeMATTIA: Yes.

11 REDIRECT EXAMINATION BY MR. DeMATTIA:

12 Q Based on the description that you had of
13 whatever height, whatever weight, did you have anything
14 else?

15 A No, we did not.

16 Q The height and the weight, about how many
17 people in the world are like that?

18 A Several million people.

19 Q I mean, I'm not trying -- Did you narrow --
20 Did you have any information to narrow it down?

21 A None.

22 Q You just had a height and a weight.

23 A That's correct.

24 Q Did you have a name?

25 A None.

Muhammad - Redirect / Recross

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1 Q Did you have a description?

2 A No.

3 Q Could you do anything with a height and
4 weight?

5 A Not much at all.

6 Q Did you talk about it?

7 A Yes.

8 Q But you didn't go out and arrest anybody with
9 a height and weight?

10 A No, we did not.

11 Q Why not?

12 A We didn't have a name for the height and the
13 weight.

14 Q Oh, okay. Thank you.

15 MR. DeMATTIA: No further questions, Judge.

16 THE COURT: Mr. Gordon?

17 MR. GORDON: Thank you, Your Honor.

18 THE COURT: Limited to the scope of redirect,
19 please.

20 MR. GORDON: Thank you.

21 RECROSS-EXAMINATION BY MR. GORDON:

22 Q You had a little more than height and weight,
23 didn't you, Detective?

24 A I'd have to refer to the bulletin.

25 Q Did you know, other than the bulletin, did

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Muhammad - Recross 200

1 you know more than the height and the weight of the
2 potential suspect at that time?
3 A Black male.
4 Q Did you know anything about the identity of
5 the black male?
6 A No.
7 Q Do you recall Investigator Powell taking a
8 statement from a person by the name of Gerard Brown on
9 December 16th of 2001?
10 A I don't recall.
11 Q Well, is it -- By the way, was Investigator
12 Powell working on the case before you got assigned?
13 A Yes.
14 Q And so when you got assigned on December 17th
15 you reviewed all the statements. You told us that
16 before, right?
17 A Yes, I believe so.
18 Q And did you review a statement given by a
19 Gerard Brown on December 16th to Investigator Powell at
20 the Essex County Prosecutor's Office?
21 A I don't recall.
22 MR. GORDON: Your Honor, I'll ask that this
23 be marked.
24 MR. DeMATTIA: Judge, I would object based on
25 my line of questioning to scope of redirect.

Muhammad - Recross 201

1 THE COURT: Well, are we going to get to some
2 connection?
3 MR. GORDON: On the way.
4 THE COURT: All right. I'll overrule the
5 objection.
6 BY MR. GORDON:
7 Q I'm going to show you, Detective, what's been
8 marked D-3 for identification. I'm showing it to the
9 prosecutor now. I ask you to take a look at that and
10 let us know when you're finished.
11 A Okay.
12 Q Do you recognize that document?
13 A Yes.
14 Q What do you recognize it to be?
15 A It's a formal statement.
16 Q Does it appear to be a formal statement taken
17 from a person named Gerard Tyrell Brown?
18 A That's correct.
19 Q Apparently taken on December 16th of 2001,
20 the day before you were assigned to this case?
21 A Yes.
22 Q Taken by Investigator Ben Powell, Essex
23 County Prosecutor's Office?
24 A Yes.
25 Q And is that one of the statements that on

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Muhammad - Recross

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1 December 17 of 2001 was part of the file which you
2 reviewed to get yourself up to speed on this case?

3 A I don't think so.

4 Q Are you telling us now that that statement
5 taken the day before was not in the file?

6 MR. DeMATTIA: Judge, I object to the
7 question. It's whether he had an opportunity to review
8 it is what's pertinent, not in the file.

9 THE COURT: Well, I think that he can say
10 that if that's the case. Objection's overruled.

11 THE WITNESS: What's the question?

12 BY MR. GORDON:

13 Q When you got the case on December 17 you told
14 us before you reviewed the paperwork in the file,
15 correct?

16 A Yes.

17 Q And this statement was apparently taken the
18 day before by your partner, who became your partner on
19 December 17th, Investigator Powell, correct?

20 A Yes.

21 Q This is one of the statements that pertains
22 to the shooting incident at Roland's Lounge, correct?

23 A That's correct.

24 Q Is this document one of the ones that was in
25 the file?

Muhammad - Recross

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1 A I don't think so.

2 Q So are you telling this jury that you never
3 reviewed this when you first got the case?

4 A Yes.

5 Q Are you sure?

6 A I'm almost positive.

7 Q But you did have discussions in depth with
8 Investigator Powell about this case, right, on December
9 17th? Right?

10 A Yes.

11 Q And you talked about different reports that
12 had been generated up to that time, correct?

13 A Yes.

14 Q Is it your testimony to this jury and this
15 trial that you never discussed with Investigator Powell
16 the fact that he had taken a statement the day before
17 from Gerard Tyrell Brown?

18 A I don't know.

19 Q It's possible that you did know that, didn't
20 you?

21 A Yes.

22 MR. DeMATTIA: Objection as to speculation,
23 Your Honor.

24 THE COURT: Sustained.

25 BY MR. GORDON:

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Muhammad - Recross

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1 Q In any event, when you and Investigator
2 Powell were discussing the case on December 17th and
3 you discussed the information that was in the crime
4 bulletin about the suspect, and you decided to do
5 nothing, were you aware of this statement?

6 A We did do something. You're saying we didn't do
7 nothing. We did do something, and --

8 THE COURT: Just answer the question. Okay?
9 BY MR. GORDON:

10 Q Let's try it again, Detective. You did tell
11 this jury, didn't you, that the only thing you did was
12 speak to Mr. Phillips. Isn't that what you just told
13 these people?

14 A On the 17th.

15 Q On the 17th of December of 2001.

16 A That's correct.

17 Q And that was after you and Investigator
18 Powell discussed the case and what had happened up to
19 that point, from the day before, the date of the
20 shooting, until that moment when you and Investigator
21 Powell were conferring, right?

22 A Yes, with the file that I had.

23 Q With the file that you had. And whether or
24 not that statement that you're holding in your hand now
25 was in the file at that time, Detective, Investigator

Muhammad - Recross

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1 Powell apparently took that statement less than 24
2 hours before, right?

3 A That's correct.

4 Q So when you were conferring with him isn't it
5 fair to say that you and he conferred about the
6 contents of this statement?

7 A Yes.

8 Q And in that statement can you take a look at
9 it and tell us if it refreshes your recollection about
10 whether or not the only thing you knew at that time was
11 height, weight and black male about the suspect?

12 A That's correct.

13 Q What's correct?

14 A You said what did I know.

15 Q I said what did you know?

16 A Black male, the height and the weight.

17 Q Anything about clothing that was discussed?

18 A I have to refer to that statement, but that's what
19 he told Ben Powell.

20 Q Well, what I'm asking you is, if you look at
21 that statement does it refresh your recollection about
22 discussing with Ben Powell that you had only height,
23 weight, black male?

24 A No, it doesn't.

25 Q After reviewing that statement do you believe

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Muhammad - Recross

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1 that Investigator Powell only had height, weight, black
2 male?

3 MR. DeMATTIA: Objection to the question,
4 Your Honor.

5 THE COURT: Sustained.

6 BY MR. GORDON:

7 Q Well, let me ask you this, Detective. When
8 you conferred with Investigator Powell on January 17th
9 (sic) and you discussed the case, and you discussed the
10 file, and you discussed what to do, is it your
11 testimony now that you didn't know that Investigator
12 Powell had taken a statement that contained many more
13 details about the suspect?

14 MR. DeMATTIA: Objection to the
15 characterization of a suspect, Judge. What suspect and
16 what characterization is he referring to as many more
17 details? It's conclusionary. I ask it be stricken
18 from the record.

19 MR. GORDON: Judge, I'll withdraw the word
20 suspect and say person.

21 THE COURT: I'm going to sustain the
22 objection on different grounds. You're describing the
23 contents at this point and what -- what Investigator
24 Powell knew or didn't know. The objection is sustained
25 as hearsay.

Muhammad - Recross

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1 MR. GORDON: I'll rephrase, Your Honor.
2 Thank you.

3 THE COURT: Thank you.

4 BY MR. GORDON:

5 Q When you were talking with Investigator
6 Powell and you decided to do nothing about the
7 information in the crime bulletin, which did describe a
8 suspect, correct?

9 MR. DeMATTIA: Objection, Judge. Again,
10 suspect, did nothing. He's summing up. It's improper.

11 THE COURT: Well, and it's also hearsay, once
12 again, containing statements with regard to the
13 contents. The objection is sustained.

14 BY MR. GORDON:

15 Q At the time that you discussed this with
16 Investigator Powell on January 17th and you decided to
17 do nothing, you indicated you decided to do nothing
18 because you didn't have enough to work with, right?

19 A That's correct.

20 Q I mean, that's what you're telling this jury
21 in this case, isn't it, that at that time all you knew
22 was height, weight, black male.

23 A That's correct.

24 Q All right. After reviewing that statement is
25 it your testimony that Investigator Powell only knew

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1 height, weight, black male?

2 MR. DeMATTIA: Well, Judge, he can't --
3 Objection. He can't testify.

4 THE COURT: Sustained. Ask him what he knew.
5 BY MR. GORDON:

6 Q When you spoke to Investigator Powell on that
7 date did he decide to do nothing, or did you decide to
8 do nothing, or was it a joint decision?

9 MR. DeMATTIA: Objection, Judge, as to the
10 conclusionary language he's using as nothing. He's
11 summing up again, Judge. He's taking it out of
12 context.

13 THE COURT: Well, at some point in time this
14 witness did say that -- The objection is overruled.
15 That's what the witness said at some point. If the
16 witness disagrees with the predicate of the question he
17 can say so.

18 MR. GORDON: Would you like me to repeat the
19 question, Detective?

20 THE WITNESS: Yes, sir.

21 BY MR. GORDON:

22 Q You and Investigator Powell, after reviewing
23 everything that you reviewed, you told us a little
24 while ago, did you not, that you conferred and the
25 decision was made between and amongst yourselves, to do

Muhammad - Recross

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1 nothing about that description of that person.

2 A Not at that time.

3 Q Not at that time. And that was because, I
4 think you told the jury, because all you knew at that
5 time -- and when I say all you knew, everything that
6 came out of your discussion with Investigator Ben
7 Powell -- was that the only thing you and he knew, as
8 far as you knew, was height, weight, black male.

9 A That's correct.

10 Q And now, having reviewed the statement, I'm
11 asking you did you -- did you come to know anything
12 else other than height, weight, black male?

13 A No, I did not.

14 Q And when you met with Ben Powell you never
15 learned then any of the details of what he had learned
16 in the statement of Gerard Tyrell Brown the day before.

17 A It's possible.

18 Q What's possible?

19 A That we talked about it.

20 Q Oh, it is possible that you talked about it.
21 Okay. Well, let's try to be precise.

22 MR. DeMATTIA: Objection, Judge.

23 THE COURT: Sustained.

24 MR. GORDON: I'll rephrase.

25 THE COURT: Thank you.

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Muhammad - Recross

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1 BY MR. GORDON:
2 Q You thought it's possible you talked about
3 it, right?
4 A Yes, sir.
5 Q Now, at some point after January 17 did you
6 come to learn more than black male and the description
7 that you had on the 17th? Did you learn more later --
8 height, weight, black male -- did you learn more later
9 after the 17th about that person we're talking about?
10 A About, yes.
11 Q At any point in time did you go -- you
12 personally -- and speak with Gerard Tyrell Brown, you?
13 A I don't recall.
14 Q It's possible?
15 A I don't recall.
16 Q And at any point in time did you go anywhere
17 else and talk to anyone about trying to ascertain the
18 identity of the person whose description you only had
19 as height, weight, black male?
20 A Yes.
21 Q Where did you go and when?
22 A To the immediate area where the incident occurred.
23 Q But you didn't talk to Gerard Tyrell Brown,
24 right?
25 A I don't believe so.

Muhammad - Recross / Redirect / Recross

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1 Q And the height, weight, black male we're
2 talking about is, again, 6-2, 270 to 280, or
3 thereabouts, right? True?
4 A It's true.
5 Q Did you know anything about clothing of that
6 person?
7 A I don't believe so.
8 MR. GORDON: Thank you, Your Honor. I have
9 nothing further of Detective Muhammad.
10 THE COURT: Mr. DeMattia?
11 REDIRECT EXAMINATION BY MR. DeMATTIA:
12 Q That person that he's asking you about is the
13 person who was fighting with Mr. Phillips inside?
14 A I believe so.
15 Q Not the shooter.
16 A That's correct.
17 MR. DeMATTIA: Thank you.
18 RECROSS-EXAMINATION BY MR. GORDON:
19 Q Well, let's see, Detective.
20 MR. GORDON: Judge, I'm going to ask that
21 this be marked.
22 MR. DeMATTIA: Judge, can I be heard at
23 sidebar?
24 THE COURT: Okay.
25 (Sidebar)

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Sidebar

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1 MR. DeMATTIA: He's going to confront him
2 with something that I had not even crossed closely to
3 with regard to my one-question redirect, or two
4 questions redirect, or re-redirect, or whatever you
5 want to call it. Now, to confront him with documents
6 -- I've allowed him a little leeway -- to confront him
7 with documents -- I want to stop it from the beginning
8 -- that he did not author to get out information that
9 is improper. I've been -- You know, I haven't been
10 objecting. Anything that he did not do personally,
11 especially when he keeps saying suspect to confuse them
12 about a suspect. What type of suspect? A suspect who
13 had a fight, a suspect who did the shooting? I'm
14 objecting, Judge, because it's totally misleading. I
15 ask that you not allow it. He can call him as his own
16 witness, Your Honor.

17 THE COURT: What has this got to do with the
18 person that we're talking about? The person that we're
19 talking about is -- is the person that was the fighter,
20 not the shooter.

21 MR. GORDON: The redirect, or the re-re-
22 redirect just was that the person we're talking about
23 is the fighter, but in fact --

24 MR. DeMATTIA: No, based on the shooter.

25 MR. GORDON: I think I can finish.

Sidebar

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1 MR. DeMATTIA: That's what the two questions
2 were.

3 THE COURT: Go ahead.

4 MR. GORDON: What I'm saying is that there
5 was, in fact, a suspect at some point in time that fits
6 the description of the person that was fighting, and
7 this document turned over in discovery, is something
8 that may be generated by this witness, or it certainly
9 may be generated by someone in Robbery/Homicide, and I
10 want to know if -- Now we're getting down to it.
11 We're talking about is the suspect, or someone who was
12 a suspect, the person who was in the fight, the person
13 who was involved in the fight, because clearly,
14 according to some members of law enforcement, that
15 person in the fight was the suspect.

16 MR. DeMATTIA: Bring those law enforcement
17 members in, Your Honor.

18 THE COURT: Stay away from -- The objection
19 is not the one that Mr. DeMattia is articulating to my
20 -- in my view. But there is a hearsay objection here.
21 You need to be careful.

22 MR. GORDON: I'm being careful, Judge.

23 THE COURT: You have to -- you have to
24 confront him with -- and I want to hear about in the
25 question anything that's contained -- even as to what

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Sidebar

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1 this document is -- have you ever seen this document
2 before? Did you generate it?

3 MR. GORDON: Okay.

4 THE COURT: And if the answer is no that's
5 it, that's the end of the inquiry.

6 MR. GORDON: Okay.

7 MR. DeMATTIA: Judge, how about my objection
8 with the fact that he was cross-examining him on a
9 statement, okay, that I asked him specifically on my
10 redirect in that statement are we talking about a
11 description of the shooter or a description of the
12 person who had the fight? He said the fight and not
13 the shooter. That is it, Your Honor. Why are you
14 allowing him to now go on more testimony on a statement
15 that he introduced? I didn't introduce this, Your
16 Honor.

17 THE COURT: You had asked him that last
18 question. You did that twice.

19 MR. DeMATTIA: I asked him what last
20 question, Your Honor?

21 THE COURT: The one that was just asked on
22 re-redirect, and he's cross-examining him in response
23 to the answer to that question.

24 MR. DeMATTIA: I didn't use these documents,
25 Your Honor.

Sidebar / Muhammad - Recross

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1 THE COURT: It doesn't matter whether you
2 used them or not.

3 MR. DeMATTIA: I respectfully disagree.

4 THE COURT: I understand. Let's go.

5 (Sidebar concluded)

6 THE COURT: The objection is overruled.
7 Please -- please mark the two-page document.

8 MR. GORDON: I'm showing it to the
9 prosecutor.

10 THE COURT: D-4 for identification. Present
11 it unidentified by title or otherwise to the witness.
12 BY MR. GORDON:

13 Q Detective Muhammad, I'm showing you what's
14 been marked as D-4 for identification and ask you to
15 take a look at that document, and tell us when you're
16 done reviewing it.

17 A Okay.

18 Q Is that a document that you personally
19 generated in this case, or reviewed in this case?

20 MR. DeMATTIA: Your Honor, that's a compound
21 question.

22 MR. GORDON: I'll rephrase it.

23 THE COURT: Thank you.

24 BY MR. GORDON:

25 Q Is that a document that you reviewed in

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1 connection with this case?

2 MR. DeMATTIA: Objection, Your Honor. It has

3 to be established as to authenticity first.

4 THE COURT: Sustained.

5 BY MR. GORDON:

6 Q Is that -- is that a document that you

7 generated in this case?

8 A No, I did not.

9 Q If on the date of January -- I'm sorry --

10 December 17 of 2001 do you recall, as you sit here

11 today, whether or not the witness, Gerard Tyrell Brown,

12 was ever summoned back to your office by you for any

13 further inquiry on information about the person that

14 was in the fight inside the bar with Kevin Phillips?

15 A I don't recall.

16 MR. GORDON: Thank you, Your Honor. I'm

17 finished with this witness.

18 MR. DeMATTIA: Nothing.

19 THE COURT: Thank you, Detective. You're

20 excused. All right, ladies and gentlemen. It's 4:15.

21 That's the bad news, that we went to 4:15. The good

22 news is that by going to 4:15 today -- and I think it's

23 good news -- and I'm not sure, it depends on your

24 perspective -- I believe you've all been here since

25 Monday, so the very next day that you're here you

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1 actually get to get paid \$40 a day instead of the

2 princely sum of \$5, I think you get for the first three

3 days. Again, that's the good news, but perhaps -- I

4 think it's additional good news for you, but perhaps

5 those of you who have been looking forward to getting

6 that \$40 as soon as you possibly can, then for those

7 it's bad news. We are not for purposes of this trial

8 -- because we've accomplished so much and because we've

9 gotten -- we've gone until this late -- it's

10 unnecessary for us, especially in light of the fact

11 that our Friday schedule becomes Thursday because

12 Friday is a holiday, and I could accomplish all the

13 things I usually do on a Friday I can do it tomorrow,

14 because we've managed to get as far as we have and our

15 next witnesses have really only been planned to be

16 scheduled for on Tuesday. You will recall I also told

17 you on Monday is always a big day and it's always

18 reserved almost exclusively for non-trial matters. So

19 that will give you a bit of a break so you don't get to

20 hit your \$40 payday then until Tuesday. I hope you

21 haven't planned on spending that over the weekend, so

22 you'll have to wait until Tuesday.

23 And in the meantime, of course, you

24 understand we're going to start promptly -- hopefully

25 promptly at 9 o'clock on Tuesday, so that we can move

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1 as expeditiously as possible.

2 But I'm going to remind you that you cannot
3 discuss this case. You can't discuss it amongst
4 yourselves, you can't discuss it with your family, your
5 employer, or anybody else. You can, of course, advise
6 family and employers as to what our schedule is and
7 that you're sitting as a seated juror on a criminal
8 case. That's all, not even what kind of case it is,
9 even if you don't identify any individuals, or time
10 frame, or location, not anything, not even the kind of
11 case. Of course, to do so would be to invite a
12 response, obviously which is improper, as I'm sure you
13 understand by now.

14 Obviously if anybody attempts to talk to you
15 about the case you need to report that fact to me or
16 the staff immediately. Don't indicate that to anybody
17 else, including amongst yourselves. Don't forget to
18 get your parking thing validated because you're still
19 on your \$5 -- so parking is still more than the \$5 that
20 you make -- before you leave, but you don't have to
21 report out or report in because we'll be taking care of
22 that for you. If there's any questions direct them to
23 the officers on your way out. They'll be sure to get
24 an answer for you or direct you to who can provide the
25 answer.

Colloquy

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1 I hope you enjoy your long weekend, and for
2 those of you who are celebrating Easter, Happy Easter.
3 And we'll see you bright and early at 9 o'clock on
4 Tuesday. Thank you very much.

5 (Proceedings concluded)

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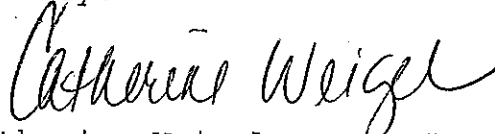
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CERTIFICATION

I, Catherine J. Weigel, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Essex County Superior Court, on March 23, 2005, Tape No. 1, Index No. 09:39:28 - 16:19:38, is prepared in full compliance with the current transcript format for judicial proceedings and is a true and accurate compressed transcript of the proceedings as recorded to the best of my knowledge and ability.



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August 12, 2005

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